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HEARINGS

IN

THE MATTER OF THE GRANTING OF PERMITS FOR THE
TRANSMISSION FROM THE DOMINION OF CANADA
INTO THE UNITED STATES OF POWER
FROM THE NIAGARA RIVER,

BEFORE

THE SECRETARY OF WAR,

AT

WASHINGTON, D. C.,
NOVEMBER 26 AND 27, 1906.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
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HEARING BEFORE HON. WILLIAM H. TAFT, SECRETARY OF WAR,
HELD AT WASHINGTON, D. C., NOVEMBER 26 AND 27, 1906,
IN THE MATTER OF GRANTING PERMITS FOR THE TRANSMIS-
SION OF NIAGARA POWER FROM THE DOMINION OF CANADA
INTO THE UNITED STATES.

WASHINGTON, D. C.,
November 26, 1906—10 o'clock a. m.

Secretary TAFT. This morning was set for the hearing of the order to be made on the reports with reference to the water-power situation at Niagara, on the Canadian side, or rather with reference to the importation of horsepower and the division of the amount to be allowed between the companies making application for it. I have asked the Chief of Engineers to be here and also the members of the Niagara Waterways Commission. I think they are all represented.

The only question to be settled now is that of the order of hearing. Is Mr. McFarland present?

Mr. McFARLAND. Yes, sir.

STATEMENT OF J. HORACE M'FARLAND, PRESIDENT OF THE AMERICAN
CIVIC ASSOCIATION.

Secretary TAFT. Mr. McFarland, your position, as I understand you from your letter, is that you oppose the importation of any horsepower from Canada?

Mr. McFARLAND. With certain exceptions, Mr. Secretary.

Secretary TAFT. Then, possibly, as you take that position, you had better be heard first.

Mr. McFARLAND. I would be very glad to be heard first. We have here copies of our brief.

Secretary TAFT. I will give you the opening and the close.

Mr. McFARLAND. There are also representatives here, Mr. Secretary, of a number of other organizations, whose names it might be well to have at this time.

Secretary TAFT. You represent the civic association, do you?

Mr. McFARLAND. The American Civic Association, Mr. Secretary.

I may say also that Judge J. K. Potter is here to speak as one of the commissioners of the New York State Reservation at Niagara. That is a commission appointed by the State of New York, as you are probably aware.

Mr. F. W. Stevens represents the special Niagara committee of the Chamber of Commerce of the State of New York.

Mr. F. B. De Berard represents the Merchants' Association of the city of New York.

Mr. H. E. Gregory represents the American Scenic and Historic Preservation Society.

Dr. John M. Clarke, the State geologist of New York, is also present.

The American Civic Association is present, Mr. Secretary, in the person of its president, who is now addressing you, and of its secretary, Mr. Clinton Rogers Woodruff, of Philadelphia, and its treasurer, Mr. William B. Howland, of New York.

Secretary TAFT. You may go on now, Mr. McFarland.

Mr. McFARLAND. Mr. Secretary, it seems wise for us to outline our point of view by urging, first, the reason for the law under which you are now acting as a tribunal.

We believe that the act of June 29, 1906, is primarily an act for the preservation of Niagara Falls and not for any other purpose. We believe, and we contend, that this act came into existence as a law by reason of the insistence of the great body of the American people, manifested by petition, by resolution, by letters addressed to the President, to Members and committees of Congress, and recently, I fancy, to yourself, and by the presence and argument at hearings held by the Rivers and Harbors Committee of the House of Representatives of those acting for important national organizations of a philanthropic and general character.

Secretary TAFT. You would not claim that what has happened since ought to affect the construction of the act of Congress, would you?

Mr. McFARLAND. Only as it bears on the fact that the people are again reiterating their demand, the people not taking into account details as much as intent, Mr. Secretary.

Secretary TAFT. I do not see what popular expression has to do with the construction of a statute after the statute has been passed, I confess.

Mr. McFARLAND. I am not a lawyer, Mr. Secretary. I am told that there are rules which make it proper to show the condition of public sentiment as bearing upon the mischief which an act is expected to remedy.

Secretary TAFT. After the act is passed?

Mr. McFARLAND. It is a continuation of the same sentiment and practically a duplication.

However, abandoning that, Mr. Secretary, we think that we could rest on that manifestation of public sentiment which brought the act into existence. In compliance with that will of the people this act certainly recites definitely the thought of preservation of Niagara Falls, for the language refers to possible diversions which, "in connection with the amount diverted on the Canadian side, shall not injure or interfere with * * * the scenic grandeur of Niagara Falls."

In the act there is another provision which seems to indicate a desire, primarily, to preserve Niagara Falls—that one referring to the removal of structures which may be placed in violation of the act.

There is also a most urgent insistency in this act for the negotiation of a treaty, and that insistence is not for the conservation of any commercial interests, Mr. Secretary, but primarily, as the act recites, "for the purpose of effectually providing by suitable treaty with said Government (the Government of Great Britain) for such regulation and control of the waters of Niagara River and its tributaries as will

preserve the scenic grandeur of Niagara Falls and of the rapids in said river."

As showing something of the feeling of the people as it existed at the time this act was under consideration I read you a sentence from the report of the Rivers and Harbors Committee, which accompanied House joint resolution 83, as follows:

Numerous petitions have been referred to this committee protesting against the use of the waters of Niagara River for power purposes. The opposition manifested to the promotion of material interests at the cost of the scenic grandeur of Niagara Falls has been so vigorous and so general as to cause the President to direct attention to the subject in his message and also to justify action by Congress.

It may be noted, as you are well aware, Mr. Secretary, that up to the time the present agitation was inaugurated, a little more than a year ago, by the association with which I am connected, this matter was considered purely as a prerogative of the State of New York. The Federal authority had not been exerted. Congressman Burton, who is the author of this bill, expressed some surprise that "the companies which have proceeded to divert the waters of the river under authority of the State of New York should never have appealed to Congress or to the Federal Government to confirm the authority granted by the State," and he says "the Federal authority should now be exerted"—for what purpose? Unquestionably, as he says, "for the preservation of the scenic grandeur of Niagara Falls."

He discusses, as you have doubtless before informed yourself, the "very large responsibility" which is imposed upon you, for he wishes to have considered the question of impairment of the scenic beauty of the cataract, which is the cause for the imposition of this responsibility.

We insist, Mr. Secretary, that in the mind of the framer of this bill and of the people who caused its enactment, there was no other thought than that of the preservation of Niagara Falls as a great scenic feature. This legislation was not demanded by any of the gentlemen representing private interests whom I see present this morning. It was demanded by the people. Not a single one of the private interests appeared in its favor. They all appeared against it.

We submit, therefore, that we are setting forth to you, substantially and conclusively, the dictum that this act is for the preservation of Niagara Falls; that it was the result of a great public uprising; that it was not asked or desired by any of the private interests which now desire advantage under it.

In view of these facts and of the well known and continually manifested public interest in the complete (and not the partial) preservation of Niagara Falls, we urge that we have established the original intent, spirit, and inspiration of the act of June 30, 1906.

This act, however, includes certain limitations, but those limitations bear only on the purpose of the act for the preservation of Niagara Falls. It is specifically provided that there are limitations on your authority, but those limitations and quantities, as you are well aware, are mentioned specifically as in nowise to be construed as directions to you to issue permits for the diversion of water or the admission of power from Canada.

It plainly appears that if you shall find or deem the use of the water of the Niagara River for power production to interfere with "the scenic grandeur of Niagara Falls," the main purpose of the law, you are empowered, under the law, to refuse to grant any permits for the diversion of water, or the transmission of power from the Dominion of Canada, and even to revoke any that may have been granted.

There are certain classes of permits, as you know, mentioned in this law, but there is no classification which makes those permits in any sense permanent. The authority is certainly specifically given to you to revoke any or all permits granted by you under authority of this act.

There is in this act, Mr. Secretary, an implied (and only an implied) recognition of commercial interests. The main purpose of the act is clearly set forth as that of preserving the scenic grandeur of Niagara Falls, and the implied recognition of commercial interests is subservient to this.

We respectfully urge that your first and paramount duty under this act is to see that nothing shall "injure or interfere with * * * the scenic grandeur of Niagara Falls," and that its plainly expressed purpose is of far more binding force upon you than a remote implication of commercial interests.

With respect to the admission of power from the Dominion of Canada, we insist that any such power admitted has an effect upon the scenic grandeur of Niagara Falls equivalent to diversion on the American side. All these gentlemen know, and you yourself are undoubtedly aware of the fact, that the international boundary is considerably west of Goat Island, and that the Horseshoe Fall is not, as is sometimes said, the Canadian Fall, but fully two-fifths, I think, an American Fall, in the sense of possession. Anything which impairs the grandeur of the Horseshoe Fall infringes the rights in Niagara of the United States of America, and certainly traverses two of the express purposes of this act—the protection of the international boundary line and the preservation of Niagara Falls as a scenic feature.

It is well known, for Captain Kutz has very fully expressed it in his report, that Canada can use a very limited amount of the power which it is proposed to generate on that side. Captain Kutz puts it at about 40,000 horsepower. The Hydro-Electric Power Company, of the Province of Ontario, a commission erected by the Province of Ontario for the purpose of protecting its citizens against a monopoly of electric power, on page 7 of its report, mentions the amount that can be reasonably used within a reasonable time as "at least 50,000 horsepower," and it is admitted that is the limit of what Canada can now use of this vast amount of power.

The combined capacity of the three great Canadian power plants that are here asking for your goodness to them, is 415,000 horsepower. It is freely admitted it is expected to market most of this in the United States. Indeed, in one of the briefs submitted to-day by one of these power companies in confirmation of its demand for more power than has been assigned to it by the members of the International Waterways Commission and by Captain Kutz, there is the distinct admission that they would prefer to abandon the Canadian market for entrance into "the richer markets of the United States," as they express it.

Well may they say so, when they are under the fear of governmental regulation in the Dominion of Canada, and there is no regulation whatever on this side.

These facts were very well known to the framer of this act which we are now discussing, and therefore a clear limitation was placed upon the total amount of power that might be produced in Canada, by reason of his knowledge that there could not be very much of it used there. He has covered into the statute, as you know, a total limitation of 350,000 horsepower, including the amount generated and used in Canada.

That gives this law and yourself practically a complete control of the Canadian situation at this time. If you were to shut out every single watt of electric energy at noon to-day from crossing the Niagara River, it would simply not be produced. Canada can not use it and has no expectation of using it for many years.

For confirmation of that, Mr. Secretary, I should be pleased to refer you to this report of the Hydro-Electric Power Commission of the Province of Ontario, an official document.

We insist that between the legal limitation of a total of 350,000 horsepower and the amount which can really be utilized in Canada within the life of this act (which is but three years) 300,000 horsepower net is too much to be taken out from the Niagara River without interfering with the primary purpose of this act—that of preserving the scenic grandeur of Niagara Falls.

Of course, these gentlemen have the contrary view. It is not unfair, however, to go into some little comparisons as to just what water will be abstracted if this contention shall be granted and this power admitted.

The intake of the Ontario Power Company is above the first cascade, and I think draws from the full volume of the Niagara River above the "parting of the waters" at the head of Goat Island. It is probable this has a bearing on the American Fall as well as on the Horseshoe Fall. This intake is 618 feet wide and 13 feet deep—a river in itself. What it amounts to is considerably more than the volume of the Delaware River where Washington took his troops across it—indeed, at its mouth—in actual use of water.

The great gathering dam of the Electrical Development Company juts out 785 feet into the Niagara River and is planned to feed a channel 27 feet deep—another and larger river extracted from Niagara. It takes about 10 per cent more than now flows out of the mouth of the Potomac River.

The Canadian Niagara Power Company takes water at the turbulent slope just above the Horseshoe Fall, in a canal 282 feet wide and 15 feet deep—a third river. That takes ten per cent more than the Susquehanna River, the greatest of all the rivers I have mentioned, at its outfall.

Secretary TAFT. What do you mean by its outfall?

Mr. McFARLAND. I mean the average low-water flow, the summer flow. I might explain here that in some literature of which I have been guilty I have made a mistake with respect to the comparisons with certain great rivers of the country. I was unfortunate enough to take the average flow, which the eminent hydraulic engineer who supplied me the data says is all wrong. The average flow includes consideration of the floods, which, in case of the river with which I

am most familiar, the Susquehanna, sometimes rise to more than 100,000 cubic feet per second.

He insists, and he is in no wise interested in this subject or in any commercial development—he is a cold-blooded consulting engineer—that the only way to consider any river is its average low-water flow, its flow during the summer months, at the time the agriculture of the country is in its full progress, and these rivers represent what is left.

All combined, Mr. Secretary, the recommendation is to give them, for merely the 160,000 horsepower, which is called the first limitation of this bill, the combined summer drainage of the State of New York, with the State of New Jersey thrown in; and that, it is insisted, will make no difference upon the falls!

I can confirm these figures for you, and I should be very glad to do so. I have not cited a figure which is not either in the report of the International Waterways Commission, or in the report of Capt. Charles W. Kutz, or given to me by a capable hydraulic engineer, whose name I shall be glad to submit to you.

Now, Mr. Secretary, is it reasonable to suppose that so vast a volume of water as this can be abstracted from Niagara River without interfering with the scenic grandeur, the preservation of which is the main purpose of this act? The Waterways Commission has well represented this matter in its first report, on March 24, 1906, where it is averred that “the glory of Niagara Falls lies in the volume of its water rather than in its height or in the surrounding scenery.” The whole Commission, when they reported a little later, very well voiced the sentiment of the world, as well as that of the United States of America and of the Dominion of Canada, by saying that “in the opinion of the Commission it would be a sacrilege to destroy the scenic effect of Niagara Falls.”

Again, this matter has been commented upon by the Waterways Commission in another way. Colonel Ernst was before the Committee on Rivers and Harbors and, in his testimony there, speaking of his own recommendations in the report of his commission, he said: “To divert the quantity of water which we propose there, we think, undoubtedly, is going to have an injurious effect. * * * We can not tell; it is a dangerous experiment.”

You may read volumes and volumes of the testimony of engineers, Mr. Secretary, as to the relations of these matters, and you will never get any further than you are at this moment, because they differ radically. You will find estimates as to the amount of water passing over the brink at Niagara to vary by as much as 80 per cent. You will find testimony as to the amount of water passing over the American fall to vary as much as 50 per cent; and in the committee room of the Committee on Rivers and Harbors, last April, it was shown by the testimony of the chairman of the New York State reservation at Niagara that the day before, at an average stage of the river, there had been less than half the volume passing over the brink of the American fall that had been reported by three or four engineers within that room within a week. It is just as Colonel Ernst has well said: “No one can tell; it is a dangerous experiment.”

We respectfully urge to you, Mr. Secretary, that it is not necessary to make this experiment. Under the clear intent of the act, you are charged with the preservation of Niagara Falls, and you may decline

to issue permits for the admission of this power if you believe that that admission will infringe upon that which is the main purpose of the act.

It will be urged that these diversions that are now asked are but a little. They are not the whole thing. They can not take the whole 415,000 horsepower. They only want 160,000 now, if they can get it, but they put in applications for a vast excess beyond that. The difference, Mr. Secretary, is but one of degree. It is a question of arithmetic more than it is of any other representation. You can not have before you a glass of water and pour out a fifth of it without noticing that there is less water there. You can not remove from this room one-fifth of its members without noticing some vacant seats. When you are charged with the duty of maintaining the integrity of Niagara Falls we fail to see how that integrity can be maintained if there is also a purpose, not expressed in the act, of seeing how close you can come to interfering with it.

Captain Kutz, in his report on page 14, states clearly that the granting of permits for the admission of a total of 157,500 horsepower from Canada would encourage and justify the installation of additional machinery for the production of power from Niagara water in each of the three large Canadian plants. Therefore, such permits as you are now asked to grant would effectually operate in direct contravention of the paramount purpose of the law, which is unquestionably for the preservation of Niagara Falls.

Secretary TAFT. I do not quite follow the quotation, or your argument from it. Do you mean that if I were to grant permits for 157,000 horsepower that would necessarily encourage them to think I am going to grant more?

Mr. McFARLAND. Captain Kutz says they would be encouraged to install additional units and to prepare to generate more power if they could have this much encouragement at the start.

Secretary TAFT. Why?

Mr. McFARLAND. I will have to refer you to the Captain for that.

Secretary TAFT. But you use that as an argument. What is your course of reasoning with respect to it?

Mr. McFARLAND. My course of reasoning is that if 157,500 horse power is now abstracted the companies will install other machinery and that they will then come here again for permission to transmit more power. They will say that they have invested money, that they have vested rights, and that they must be permitted to go further in the experiment of seeing how much can be taken from the Falls without ruining them.

Secretary TAFT. How can they use such an argument? On what theory can they base a claim that they are going to get more because they get a certain amount?

Mr. McFARLAND. I hardly think I could suggest how they would do it; only they do it.

Secretary TAFT. But we are discussing the question of principle. Their position, as I understand it—or whether it be their position or not it is one that would naturally suggest itself—is that before Congress took any action at all leading them to think there was to be any limitation, they had invested a certain amount of money in plants.

Mr. McFARLAND. Yes, sir.

Secretary TAFT. That argument has a certain weight, that because they are granted enough to enable them to make a reasonable profit out of what they invested before they knew there was to be any limitation; but it would certainly be a very different argument that because we allowed them to have enough to satisfy the investment they made before they anticipated this legislation, therefore because we granted them that, they have a right to think we would grant them more. I confess I do not follow the reasoning, whether it be Captain Kutz's or yours.

Colonel ERNST. It is not Captain Kutz's.

Mr. McFARLAND. I will find the place. I read from paragraph 32, page 14, of his report: "If permits are granted for these amounts"—that refers to the net amount of 157,500—"the Ontario Power Company would be justified in installing a seventh unit as a spare, the Canadian Niagara Power Company would be justified in installing two more units, one as a spare, making the nominal capacity of its plant 66,000 horsepower. The Electrical Development Company would be justified in installing three more units, one of them a spare, making the nominal capacity of its plant 75,000 horsepower, half of which, the proportion asked for, it would be permitted to transport to the United States."

I am very glad to have you make these statements, because it is excellent notice to these gentlemen that you do not wish to encourage them.

Secretary TAFT. But to get back to the use you made of that statement. If I followed what you have read, what he means in his explanation is this, that the distribution of what he recommends of the 157,000 is really all that they are entitled to, because that which he recommends should be distributed of the 157,000, would justify them, for purposes of income, in completing that which they had already begun. That is what he means, I suppose.

General MACKENZIE. That is the meaning of the words.

Secretary TAFT. Not that he intended to say they would be justified in counting on an additional allowance.

Mr. McFARLAND. Personally, as an American citizen, I feel a little nervous that the engineer officer charged with getting at the facts for your consideration should find it necessary to go so deeply into the economics from the standpoint of profit production of these companies.

Secretary TAFT. Mr. McFarland, we may as well understand each other on that subject. I received a protest from you as to what Captain Kutz did, on the ground that he went and consulted the corporations—

Mr. McFARLAND. I beg your pardon there, Mr. Secretary. My protest was that an article, printed in a prominent paper, the Philadelphia Press, stated what he was going to do. I had nothing in the world to say about what the captain did, but I passed on to you the common fact that was given out to the public as to the sympathetic interest—

Secretary TAFT. Because a plant is owned by a corporation is no reason why there should be a feeling that an American citizen is not interested in having justice done, is it?

Mr. McFARLAND. Precisely.

Secretary TAFT. Secondly, there is no reason why an American

citizen should not be interested in having an officer discharge faithfully the orders that are given him.

Mr. McFARLAND. No, sir.

Secretary TAFT. In the preliminary hearing, what I wanted to say—possibly I did not say it as clearly as I should have done—was that what I desired to know was what in good faith had been invested by these corporations on the assumption that there would be no limitation imposed on the amount of water they would use; and that was what Captain Kutz was directed to investigate. What else could he investigate but the investment of the corporations and what their situation was with reference to investments.

Mr. McFARLAND. Nothing else, that I can see, Mr. Secretary.

Secretary TAFT. Has he done anything else than that?

Mr. McFARLAND. He seems to have done nothing else.

Secretary TAFT. Then why criticise him?

Mr. McFARLAND. I am not criticising him.

Secretary TAFT. I thought you said that as an American citizen you did not like his report with reference to that particular subject.

Mr. McFARLAND. I said the construction which was placed on my letter to you, which came from the way in which a supposedly able correspondent—

Secretary TAFT. I do not know anything about correspondents or newspapers.

Mr. McFARLAND. I promptly retracted my statement and showed my gratification at what you had said.

Secretary TAFT. What I am anxious to do is to have an atmosphere of justice here. Not an atmosphere of hysteria, not an atmosphere of corporate greed, but an atmosphere of justice, and that I am going to insist on.

Mr. McFARLAND. I think you will find that I am—

Secretary TAFT. I confess I rather question the propriety of your criticising an Army engineer for doing just exactly what he was directed to do, and doing it, as I am informed, well; for Captain Kutz's reputation is that of one of the ablest members of the Army Engineer Corps, and it is a corps that stands so high that, being the head of the War Department, it does make me a little bit impatient to have criticisms that I do not think are just directed against them.

Mr. McFARLAND. Mr. Secretary, in the statement that I have quoted here do you think I am criticising Captain Kutz?

Secretary TAFT. No; but I understood you to do so just now.

Mr. McFARLAND. When you teased it out of me.

Secretary TAFT. I did not tease it out of you.

Mr. McFARLAND. I was quick to answer.

Secretary TAFT. If it is only the result of teasing, we will pass it over.

Mr. McFARLAND. That is all. I have no desire to criticise Captain Kutz, and I have tried to avoid a word of it.

I have made my point, Mr. Secretary, that the transmission would directly contravene the purpose of the law, in our view. Whether or not it is well made is for you to decide.

As to the reason for Canadian production, why is this power sought to be brought into the United States? Why was it not produced in the United States of America? The Niagara River is a boundary stream between the two countries. Simply because the

State of New York has resisted the establishment of any more power plants, and the New York State Reservation at Niagara has steadfastly refused, under tremendous assaults, of which I have no doubt Judge Potter will tell you, to permit any interference at all on that side. That is to say, these companies were not able to produce it in the United States. Therefore they went to Canada.

As to the comparative effect of the diversion of water at Niagara Falls, there is very great difficulty in deciding it, for the reason that the abstraction for power production is gradual. It does not happen over night. It is impossible to get a market for such vast quantities of power at once. One industry is established here, another one is established there. Two extra street cars are put on the line here and half a dozen at another place. A little more water is abstracted, a little more power is produced. You can say you are a day older than you were yesterday, but your mirror will not confirm it for you absolutely. The depletion of Niagara Falls is bound to be so gradual, if this power is admitted, that it will not be noticed except by comparison between two great periods, when its majesty will be found to have been seriously affected.

I urge upon you that it is a very invidious attack made upon the great Fall. The depletion is gradual. Doubtless the oldest inhabitant of Niagara Falls will be here to say he has seen the falls every day and he has not seen any difference in them. I should be glad, also, to read a letter from a reliable resident of Niagara Falls, who will tell you the depletion is distinctly noticeable.

We urge, however, that the American people, to whose insistence the act is due, are not anxious to see how close to the line of disaster you can come. All the insistence of the people, all the letters, all the urgency, have been for the preservation of Niagara Falls, and for the preservation of the whole of it. The President himself seeks and hopes, in both his messages, to preserve Niagara Falls in all its glory; not in 80 per cent or 70 per cent of its glory, or in any portion of its glory, but in all its glory, and that is the feeling of the people of the United States to-day.

That the diversions do count is well shown again by the admirable report of the International Waterways Commission last April. The report was made in these words: "The amount thus far actually diverted is but 17,800 cubic feet per second, and has had an appreciable effect upon the Falls."

If you should increase that by the full amount which is claimed on the American side, and which is not under discussion to-day, and by this Canadian diversion which is under discussion to-day, if I am right the total would reach something like 44,700 cubic feet per second, which is more than twice that which was previously reported as showing an appreciable effect upon the Falls, and fully 20 per cent of the average flow.

That calculation does not take into account any of the existing or proposed diversions incident to the necessary sanitary and navigation canals which must inevitably affect the Falls.

In the various reports of the American members of the International Waterways Commission, in Colonel Ernst's testimony before the Committee on Rivers and Harbors, and in Captain Kutz's excellent report, stress is laid on the vast amount of capital invested by the companies developing and transmitting power at Niagara Falls.

We agree with you that it was wise and necessary that you should have all the information that could lead you to properly judge this matter; but we do protest against the spirit of expediency which has been shown in the recommendations in those reports. As to the findings of these engineers, there can be no question whatever. The country has absolute confidence in them; and where they differ, as they frequently do differ, from the findings of the engineers who are interested for the power companies, no one hesitates a fraction of a second as to which to believe. We do object to the tone of expediency in the recommendations of these advisers of the Government.

These recommendations of expediency were disregarded by Congress in the enactment of this law. It is well known and provable in an instant that the recommendation of the International Waterways Commission was for the permissible diversion of a very much larger amount of water than is possible under the present act. Congress disregarded these expedient recommendations. Why? Because of the pressure of the people to save Niagara Falls.

Again I refer to this excellent report of the International Waterways Commission for confirmation as to how such things should be regarded. In paragraph 29 of the report of April 26, this occurs:

The United States Government has reserved lands of striking picturesqueness, grandeur, and interest, regardless of their value. These illustrations would seem to prove conclusively [they had previously injected an illustration of the value to the city of New York of its \$225,000,000 park] that the people are not inclined to offset mere commercial values against the intangible, none the less great, advantages found in the preservation of the great works of nature.

We could not ask a more admirable presentation of the case than that.

We ask in this presentation, and we urge to you, that in support of the preservation of no great work of nature have the people spoken so generally and so distinctly as in regard to Niagara Falls. From the President to the humblest citizen the contention has been that Niagara Falls should be preserved in all their grandeur, not in 80 per cent of their grandeur.

Is it possible that a nation that can afford to build the Panama Canal, at a cost of whatever millions will be required, that can afford to own and enjoy the Yellowstone National Park, is not both able and willing to own, undamaged, and to enjoy in its full majesty, not in 80 per cent of its majesty, the chief scenic glory of the western world, Niagara Falls?

Secretary TAFT. Mr. McFarland, what you are saying now is quite important in the construction of that statute. Is it your idea that the statute intended to preserve the scenic beauty of Niagara to the point that nothing was to be diverted from it?

Mr. McFARLAND. The statute is silent as to that.

Secretary TAFT. I understood you to say that it did not want 80 per cent; it wanted 100 per cent of the Falls.

Mr. McFARLAND. You must understand me to say that the people underlying the statute insist that all the Falls be preserved.

Secretary TAFT. I am trying to construe the statute.

Mr. McFARLAND. Do not get me to do that.

Secretary TAFT. That is what binds me. I am trying to get your idea of its construction. You say 15,600 cubic feet necessarily diminishes the volume of the water.

Mr. McFARLAND. Yes, sir.

Secretary TAFT. But that Congress intended to preserve the full scenic beauty. Is it your idea that it is my duty to shut that off also?

Mr. McFARLAND. I believe it is your duty, Mr. Secretary.

Secretary TAFT. To shut it all off?

Mr. McFARLAND. I do not urge you to do it.

Secretary TAFT. But you think it is my duty, under the statute, to go that far?

Mr. McFARLAND. I am sorry to be pressed into saying it. I have not stated publicly; but I do believe the time will come, and is now——

Secretary TAFT. But the time is here now.

Mr. McFARLAND. That if you construe this act as I have argued, and as I believe it is the intent of the act, it is your duty to shut it all off.

Secretary TAFT. I believe that is the necessary result of your argument. If that be true, then I will ask you why Congress put in any of these limitations at all?

Mr. McFARLAND. Mr. Secretary, is it competent for me to show what occurred at the time the act was being put through Congress?

Secretary TAFT. I am not going to lay down as strict rules as the United States Supreme Court does ordinarily. They are not usually patient of hearing arguments that were made in the House or the Senate upon the construction of a statute, but I think sometimes those arguments are illuminating.

Mr. McFARLAND. A very different bill was drafted, and it was urged with all the fervor that we could bring to bear. It was changed by the insistence of these gentlemen who are here, by the intrusion of material interests—indeed, by a clean, straightforward hold up in the Senate; and the provisions which give you trouble were inserted at the last moment in conference committee. The bill does not represent the sentiment which brought it into existence.

Secretary TAFT. Ah, but I can not follow the sentiment that brought it into existence. I must follow the sentiment that passed it, and that is the action of the House and Senate of the United States. Do you not admit that, Mr. McFarland?

Mr. McFARLAND. Yes, sir.

Secretary TAFT. Am I not bound by the statute?

Mr. McFARLAND. I think you are bound, absolutely, by the statute.

Secretary TAFT. Is not your statement, therefore, an admission that the construction which I asked you whether you did put on the statute is a construction that really can not be sustained, in view of the language of the statute?

Mr. McFARLAND. I would rather refer that to General Griggs, who is prepared at a future time to argue that point.

Secretary TAFT. I would be very glad to hear from anybody representing your contention. What I am trying to do is to get help with reference to my duty, not with reference to the sentiment of the country now or the sentiment of the country before. The thing that governs here is that which takes definite form in the shape of a

statute. That is what I am trying to find out. That limits my duty. Do you not admit it?

Mr. McFARLAND. Yes, sir; absolutely.

Secretary TAFT. So the question is what the statute was as it passed both Houses, not what it was when you introduced it.

Mr. McFARLAND. Congress unloaded on you its own hard job. Everybody knows that. I admit the difficulty of the job, and we all have absolute confidence in your handling of it.

Secretary TAFT. I am very much obliged to you if you have, but I have to follow a particular course, and that is to take the statute, examine it by the four corners, take any relevant circumstance that may aid me in reaching what Congress meant, and then follow out what Congress meant. Now, do you not think the motive of those who introduced the bill, or procured its introduction, is not controlling, when you say yourself it met an obstruction in the Senate, and it was a compromise, and that these provisions were put in because it could not have passed the House and Senate without them?

Mr. McFARLAND. Mr. Secretary, it does seem to me when you read the bill—and I may just interject here this statement, in order to get rid of this feeling of enthusiasm or hysteria which you have alluded to—

Secretary TAFT. When I say hysteria, I regard anything as hysteria that is not founded on fact.

Mr. McFARLAND. Precisely.

Secretary TAFT. And a mere sentiment can not govern me in the construction of a statute and the following out of a sworn duty. Do you not agree to that?

Mr. McFARLAND. I do; and in order to get rid of the feeling that I was not a fair advocate, I submitted the law to one of the ablest lawyers in the State of Pennsylvania, a deputy attorney-general, the present counsel of the Pennsylvania Railroad, a man who is well known and respected, Hon. Lyman D. Gilbert. I asked him to read it clear through and to tell me what it was. He said, "It is a statute for the preservation of Niagara Falls." "Under it, Mr. Gilbert, what may the Secretary do?" "He may refuse admission to all power from Canada and all diversion of the water on the American side." I then asked him whether there was in that bill any specific recognition of equal binding force with the main purpose of the bill, of the corporate interests involved. He said, "There is a minor recommendation, but it is specifically made subordinate, in the provision of penalties, in the character of the limitation upon the authority of the Secretary, to the main purpose of the bill. The bill is to preserve Niagara Falls, and the Secretary is authorized to preserve Niagara Fall, under it, by whatever means he finds wise." That is much better than my own opinion, because I admit I am an enthusiast, and perhaps hysterical.

We believe, Mr. Secretary—I say that with the utmost frankness—that it would be wrong and vicious to take advantage of these gentlemen who have invested their money before this idea came into the country, and to dispossess them without compensation. No honest American citizen would ever suggest that an honest dollar invested in Niagara power production prior to the beginning of this agitation should be lost to the man who invested it. We think the people of the

United States are big enough and rich enough to own those Falls and pay for them, if they must.

Secretary TAFT. But the act makes no provision for the payment, does it?

Mr. McFARLAND. The act makes no provision whatever for the payment. It is not for me to suggest to you, of course, Mr. Secretary, but I feel sure you would have no difficulty in referring any difficulties you found under it to the source of appropriations—the House of Representatives. If you find that you can not preserve the scenic glory of Niagara Falls without causing injustice, there is a course open to you, I fancy. It is not for me to suggest it. Have I made myself clear upon that?

Secretary TAFT. You think Congress intended, then, that if I found the Falls would be injured by a continuance of this taking of 15,600 cubic feet on this side, what I ought to do is to withhold the permit and then refer to Congress the question whether they will appropriate money to pay the value of what I deprive these companies of?

Mr. McFARLAND. I may say, sir, that in the discussions preceding the passage of this act that matter came up repeatedly with Congressman Burton. No man had any other idea than that it would cost something to preserve Niagara Falls; and if I remember correctly, Mr. Burton said he thought there would be no difficulty about the obtaining of an appropriation for that under the proper conditions.

I think it would be an outrage to cut off this vast work up there and simply say, because we have paramount power. "We ask you to forfeit all your investments." These gentlemen have been honest in their production of this power. Their intent is all right. I have no quarrel with it. There are a thousand equivalent cases that may occur where relief is furnished.

Secretary TAFT. Is it not usual in preparing to condemn property to provide for payment for its value in the same act by which the property is taken?

Mr. McFARLAND. I am not a lawyer, Mr. Secretary, and I can not answer that.

I am afraid I have not established my point.

Secretary TAFT. I have your idea.

Mr. McFARLAND. I would like to raise another point at this time. The United States is vigorously engaged in the restriction of certain aggregations of capital, which have come to be known as monopolies, through its judicial department. It seems to me that where there is the least possible opportunity presented for the Executive Department to prevent the formation or the fostering of the growth of another monopoly it should be used. This is a very poor time, Mr. Secretary, to create a new monopoly. That that fear is not unfounded is distinctly shown by the attitude of the government of the province of Ontario at this time. There has been formed there the Hydro-Electric Power Commission, charged with the duty of finding what it really costs to develop power from the Niagara River, and of taking such action as shall eventually furnish that power at the minimum cost to the people within reasonable radius of Niagara Falls. That contention is well shown in one of the briefs which is here to-day, a brief, I think, of the Electrical Development Company, of Ontario. They present many extracts to show the present tendency

with relations to one or the other of the contending organizations here.

We feel that it is a dangerous thing to foster the unprotected growth of a vast electrical monopoly in and about the Niagara frontier of the United States at this time if, by any legal means, it may be restrained. The admission of 350,000 horsepower, or of net 300,000 horsepower, or of half that amount, from Canada, tends very strongly to the growth of just such a monopoly. So far as the power production has proceeded, it has resulted in practically no benefits to the people at large. The people of the city of Buffalo pay 5 cents for car fare. They do not get six tickets for a quarter. Men in the city of Buffalo have written me, and I have letters here I could read to you to-day, speaking of the scant use of electricity in the city of Buffalo because of the high rates charged. A friend of mine, a business man in the city of Buffalo, told me not six months ago that he had bought a gasoline engine because it cost too much to run an electric motor under the conditions that exist.

The prices charged for electric traction at Niagara Falls on both sides are not low prices. They are high prices; from two to four times the prices charged in other parts of the country for the same service.

That this fear is not unfounded may be considered again from an equivalent instance. The Falls of Montmorency, near Quebec, have all been converted into electricity, and the scenic features have absolutely disappeared. In a speech made by Mr. J. W. Lyon, the secretary of the Western Ontario Municipal Niagara Power Union, another organization designed to free the people from the grasp of a monopoly, this statement was made:

Now, what can we expect from private development of our water power? Take Montreal as an example. At first there were three competing companies and power was sold at about \$40 per horsepower. But, as is always the case, they amalgamated, with the result that power was advanced to from \$50 to \$150 per horsepower; and it is openly stated, and not contradicted, that they are now paying 7 per cent dividends on \$24,000,000 of capital, with only \$7,000,000 invested. It is simply a question of what the traffic will bear. As cheap as coal or a little cheaper, is their motto. Now, what is electrical energy worth under such conditions? It is of little value to the public; nearly all the value belongs to the companies selling the power. What can Toronto expect from Niagara under company development? There is, first, the Electric Development Company, then the Transmission Company, then the Distributing Company, then the Street Railway Company. Toronto has had enough experience with the Street Railway Company to know what to expect. Practically the same men control each and all of the above-named companies. Each company is expected to water its own stock, each would pay large dividends, and the foundation of all is Niagara Falls.

That is the fear of our neighboring government on this subject, and they have taken action, as I have said; and in the Canadian Municipal Journal for this month there is an account of the meeting of a large number of officials of Canada, gotten together to consult about these very exactions. If all this power is admitted into the United States, we are simply fostering the growth of a difficult and unpleasant monopoly.

It may be that one of the gentlemen who shall follow me will have something to say about the way in which one of these has been fostered.

Under section 4 of this act the President is respectfully asked to open negotiations with the Government of Great Britain "for the

purpose of effectually providing, by suitable treaty with said Government, for such regulation and control of the waters of Niagara River and its tributaries as will preserve the scenic grandeur of Niagara Falls and of the Rapids in said river."

It is known that such negotiations have been opened and it is well known that little progress has been made. Why should the Dominion of Canada consider or consent to a treaty for this purpose when the United States is proposing to participate, to the fullest extent, in the proceeding for the destruction of the scenic grandeur of the Falls on her side? We do not go to Canada with clean hands in that contention. The purpose of the act to facilitate the negotiation of a proper treaty will obviously be fostered by the exclusion of the electric power it is now sought to have admitted.

A commentary on that, Mr. Secretary, you will find in the recommendation of Captain Kutz, that one of the contending companies shall be given a less amount of horsepower than another. With the merits of this controversy I have nothing whatever to do; but with the fact that there is a plain implication there of an objection on the part of the Dominion of Canada, we have something to do.

I want to read you just a brief extract from a clipping from a Canadian paper of last week, which bears strongly on this subject, showing just exactly what Canada thinks of this possibility of fostering the companies on the Canadian side which have American capital to back them, and shutting out the Canadian capital. The editorial is from the Toronto, Canada, News, of November 2, 1906:

DISCRIMINATION AT NIAGARA.

There is an indication of discrimination against the Canadian development firm producing electrical energy at Niagara Falls, and we believe the facts in the case are worthy of full publicity.

Anxiety for the preservation of Niagara Falls as a great national spectacle caused the passing at Washington of the Burton bill, which restricted the withdrawal of water for power purposes from the American side of the river, and fixed the maximum amount of power which could be imported from the Canadian side at 360,000 horsepower, provided the Falls were not appreciably impaired in producing this. The arrangement for the present is that 160,000 horsepower may be imported, and if this does not affect the Falls to any important extent, further permits may be granted.

The whole question as to granting temporary permits was left in the hands of the Secretary of War. Mr. Taft visited the three plants on the Canadian side of the river, and ordered a report prepared by Captain Kutz, a United States Army engineer. In the meantime, also, he promised to consult with the American members of the International Waterways Commission in reaching a decision. A draft report has been prepared whereby the Canadian Niagara Power Company and the Ontario Power Company will be permitted to export to the United States 60,000 horsepower each. The other concern, the Electrical Development Company, will be allowed an exportation permit of 37,500 horsepower.

Now, it is a well-known fact that both the former companies are the property of American capitalists, while the Electrical Development Company is purely Canadian. Incidentally it may be stated that some of the methods of the Electrical Development Company did not appeal to The News. Yet, although we have been vigorous in our denunciation of certain phases of policy adopted by the Pellatt-Nicholls syndicate, it must be admitted that the company has shown commendable enterprise, farsightedness, and unquestioned business acumen.

Moreover, it is a Canadian company, root and branch, and we are unable to see why it should be treated unfairly by the United States. A father may

thrash one of his children in the privacy of his back yard, but he will object if the man next door offers assistance.

The argument which induces the peculiar allotment to which we have referred is a curious one. Captain Kutz in his report points out that the three companies are on an equal footing as to capital invested, ability to complete works and transmit power, therefore he says that there is no reason for discrimination except in regard to the relative ability of the companies to command the Canadian market. He and the Waterways Commission say that the Electrical Development Company is likely to sell at least 25,000 horsepower more to the Canadian users than the other companies will, and for this reason they believe the Canadian company should not be allowed to export as much to the United States.

This is curious logic, if it be logic at all. It can be followed out to very extraordinary conclusions. Suppose that in the actual working out it so happened that the Ontario Power Company were to get a Canadian market equal to that of the Electrical Development Company? In that case the amount to be exported by the American company should be reduced to 37,500 horsepower.

But that is no more likely than in a state of sobriety to see two moons in the sky. Stripped of all pretended argument, which is no argument, the American authorities propose to allow the American companies on Canadian soil using Canadian water to grab three-quarters of the export business, and to grudgingly permit the Canadian company the other quarter. This is not "a square deal," and if such is to be the final action of the Secretary of War it is not in accordance with the reputation Mr. Taft has attained as a broad-minded, just man, able to see all sides of a dispute and bold enough to do the right thing under all circumstances.

One of the main clauses in the waterways treaty now under consideration has to do with limiting the use of water for power purposes to the existent plants. The Canadian members of the Commission should be slow to accept such a clause until it is made certain that the Canadian company shall not be the object of any unfair discrimination. It should be share and share alike. All the companies on Canadian soil operate on practically the same terms. There is no discrimination by the Ontario government in favor of the Canadian company. It is fair to insist that the United States should not discriminate in favor of the American companies.

I read this extract only to show a bearing on this proposition of a treaty. If we are insulting, as one might say, their capital, how can we expect Canada to join hands with us diplomatically in the erection of a treaty which shall preserve this scenic wonder? I respectfully refer you to Secretary Root for a personal talk upon this matter. He has expressed himself upon it within a recent time.

Secretary TAFT. I have had a conference with him.

Mr. McFARLAND. I am glad to know it.

The various briefs submitted by the companies contending for the issuance of permits to transmit power into the United States do not agree with the recommendations of Captain Kutz, either in proportion or in amounts. A very large excess is asked for, and there are suggestions of international complications, as evidenced in the briefs mentioned. We submit that the simplest and best way, the way that can not be criticised at all except from the standpoint of corporate interest and personal and private gain, is to shut it all out except the power now being actually transmitted, and thus free the hands of this Government in its negotiations with Canada for a treaty.

In conclusion, Mr. Secretary—and I have taken very much too much of your time—and in view of these statements, we urge you, in the exercise of the discretion vested in you, and in compliance with the plain intent of this act, as well as with the underlying purpose of the people of the country, not to issue permits for the transmission

of electric power into the United States except for the exact amounts of such power as are now being so transmitted, and to enforce such exclusion by suitable regulation and inspection, under the authority granted in the said act.

You will note, Mr. Secretary, that we have there agreed that what is now coming in may come in. We do not want to interfere in a drastic way. We believe the people would stand for what has been done, if further inroads are stopped. We urge and contend that the thing must stop now, and that these vast extra investments that are being projected, of which the newspapers are full, should be called to a halt by notice given that under the life of this act no further electricity will be admitted.

Mr. Secretary, may I perhaps have the privilege, unless you should consider it improper, of reading to you one or two short letters of the leaders of public opinion in this country?

Secretary TAFT. I have no objection to it, if they are founded on the reports and the facts. The truth is, Mr. McFarland, as everybody knows, either a citizen of the United States or anyone else interested in the welfare of the people of the world, is in favor of preserving the integrity of Niagara, and if that is all these letters amount to, I think it is only a work of supererogation to bring them to the attention of one who is charged with the responsibility of construing a statute and finding out what the facts are, and acting with respect to the facts, not with respect to a sentiment that is not based upon a knowledge of the facts. That is a distinction I tried to bring out in the letter I wrote you the other day.

Mr. McFARLAND. That is a very proper distinction, Mr. Secretary, but I really must differ with it to this extent, that precisely the same feeling or sentiment, whatever it is called, that existed six months ago, when this act was called into existence, exists now, and these manifestations are precisely the same as those which were made.

Secretary TAFT. And I will fully concede, if it is necessary to concede—it seems to me it goes without saying—that the act was passed to preserve Niagara Falls, and prevent its destruction, and to preserve its volume and integrity; but that is a very different thing from saying that the act did not contemplate the exercise of a discretion with reference to what ought to be done with existing investments. How far the allowing of those investments to go on can be reconciled with the preservation of the Falls, of course, proceeds, as you must admit, on the question of fact; does it not?

Mr. McFARLAND. Yes, sir. I fancy it is your right, though, in judging upon the question of fact, to inform yourself as to all the circumstances.

Secretary TAFT. That is what I am trying to do.

Mr. McFARLAND. And I fear I am not aiding you very much.

Secretary TAFT. I think you are.

Mr. McFARLAND. If I may do so, I desire to read these two letters, one from Mr. Edward Bok, who reaches four or five million people, and whose opinions are distinctly entitled to respect, and the other from Mr. Norman Hapgood. Mr. Bok, in speaking of what he has heard from his people, says:

NOVEMBER 16, 1906.

Mr. J. HORACE MCFARLAND.

DEAR MR. MCFARLAND: I sincerely hope that there is nothing in the disquieting reports which have come to me as to the possibility of the admission of Niagara-made electricity from Canada.

Surely Secretary Taft must know how the American people feel about it. If he could have been in my place during the time of our treatment of this question and could have seen the hundreds of letters that poured in from the people all over the country, he would need nothing more to convince him that the preservation of the Falls in all their beauty and magnificence is a subject very close to the people and one on which they strike no uncertain note. It seems absolutely incomprehensible to me that there should be the slightest suggestion of two sides to this question since the other side can be only one of commercial possibilities, and material people as we are that did not weigh an ounce with the American people when they spoke to us on this question. They simply said: "We do not care how valuable the Falls may be for power purposes; we want them left alone." That is the whole crux of the matter.

Believe me, very cordially, yours,

EDWARD BOK.

Mr. Norman Hapgood, the editor of Collier's Weekly, says:

NOVEMBER 14, 1906.

J. Horace McFarland, Esq.,

American Civic Association, Harrisburg, Pa.

DEAR MR. MCFARLAND: I regret very much that I did not know about the hearing on the 20th in time to write a strong appeal to our readers to send their opinion to Secretary Taft.

In spite of the very powerful men who will present the most plausible arguments at the hearing, in favor of the commercial interests, I am full of the belief that Secretary Taft will see the facts as they are and act upon them without fear. His record in the Philippines is one of the most inspiring encouragements the country has had toward standards of conduct higher than immediate money gain for ourselves. We can well afford to preserve Niagara for posterity; and any man who helps to do so will be of greater aid to the country by his example than he can possibly be by aiding a few power companies to extend their activities.

I am in no sense qualified to speak as an expert on this subject, but I have been thrown in contact with a number of men who are so qualified, and I have not met one who had studied the question deeply and who was free from any financial interest in it, who did not look with discouragement and alarm upon such use of the Falls as is now being permitted, and as will be urged with skill and ruthless self-interest by the lawyers and other representatives of the power companies.

Speaking, therefore, as one whose constant duty it is to study public opinion as extensively as possible, I add the plea of this newspaper to whatever other appeal you may have, most emphatically for a decision that will put this country in the position of choosing permanent good and uplifting influence, even against great opposition, instead of seizing upon immediate convenience and following the line of least resistance.

Yours, very sincerely,

NORMAN HAPGOOD.

Mr. Secretary, if I may venture to allude to the communications you have received here, you will bear me out in saying that they have been from governors, Senators, Representatives, judges, doctors—

Secretary TAFT. Yes; I have the Chief Engineer's office full of them, and among them is a letter from my mother and my aunt pleading with me to preserve Niagara. [Laughter.] What I meant to say to you, Mr. McFarland, in that letter I wrote you, was this, that those things do not reveal to me anything I did not know before.

Mr. MCFARLAND. I am very glad of that, sir.

Secretary TAFT. They do not assist me in the slightest in coming to a conclusion, because the conclusion must be founded on the meaning of Congress under the statute and on the facts that are to be found. That is what I meant to say. That is the reason I wished you to come here and make an argument, and not rely on that ton of postal cards and other communications, including some family epistles.

Mr. McFARLAND. Have I in some sense aided in the matter of bringing it before you, then, independent of the postal cards?

Secretary TAFT. You have certainly made it a matter of thought. I can state that.

Mr. McFARLAND. Mr. Secretary, it was rather a pleasure to me to say that this volume of communications you have received adds to "the great army of meddlers," as we are called in an official communication, which has been received, I believe, from the city of Niagara Falls.

Secretary TAFT. You understand, Mr. McFarland, I do not care what you are called, whether you are called meddlers, or what. You have a right to be heard; but the question of the rules of decision that are to prevail in reaching a conclusion is of course a matter that must depend upon an examination of the statute and what my duty is in the premises.

Mr. McFARLAND. Would you prefer to hear from another of our representatives?

Secretary TAFT. No; I think you are entitled only to one argument in the close, and those who desire to be heard on your side ought to proceed now, with the exception of one whom you may select for the close.

Mr. McFARLAND. Mr. Woodruff will take care of the close for us, and, I think, if Judge Potter would present the case of the New York State reservation at Niagara it would be wise.

STATEMENT OF JUDGE A. K. POTTER, REPRESENTING THE NEW YORK STATE
RESERVATION AT NIAGARA FALLS.

Judge POTTER. Mr. Secretary, as one of the commissioners of the State reservation at Niagara Falls, I am here to oppose this application. I do it largely now, as the matter has come up here, on the ground that it is inopportune. I recognize the fact that there is ample authority for you to exercise your discretion. Whatever the rights of the United States may be in this question, you are delegated and authorized to take all these matters under advisement, and exercise your discretion, and do that which is right, and we have no doubt it will be done. My remarks will be addressed to your discretion, and what should guide and aid you.

The act under which you are proceeding to-day was a provisional act, really. The purpose of Congress, if I interpret it correctly, was to maintain the statu quo until such time as the two governments who really have the final say in this matter could get together and determine what ought to be done; and I think that your duties in the construction of this act lie just there, in seeing what best will preserve the statu quo and leave the situation open for discussion and adjustment between the two great countries who are interested.

Now, the United States undoubtedly has a duty, and had a duty when this act was prepared, under the treaty with Great Britain, and under the ordinance establishing the Northwest Territory of 1789, which devolves upon the United States the protection of the lakes and connecting rivers and tributaries to them.

That has been discussed in the United States court, in a case in Ohio, where the question of the power and duty of the United States in protecting these waters and what their duty should be was under discussion. It was in one of the inferior courts of the United States and arose, I think, upon either an application for an injunction from interfering with one of the tributaries to Lake Erie, or else on a motion to vacate the injunction. However, it was a matter for the United States as a custodian of the waters; but the United States is but one custodian of the waters of the Niagara River. I am not going to elaborate upon that. It has been a matter of discussion heretofore before the Committee on Rivers and Harbors, where an ex-Attorney-General of the United States took that position, and it is discussed in a brief by Mr. Gregory, who, I think, is present here, which is among the proceedings of that hearing in great detail.

But I wish to urge upon you this, that in the exercise of your discretion and your judgment it is to preserve the statu quo in such condition as will best lead, harmoniously, to a solution of the question which these two countries must eventually meet, if it is ever closed. I have said that the United States is but one of the custodians. Canada, or Great Britain, is another. The State of New York, we all know, owns the bed of the river. It owns all the rights that a riparian owner may have in navigable streams. It goes no further than that, and the United States is simply a custodian of the highway.

I am not going to urge here the fact, which I believe to be the law, that the United States in that capacity has no power and no right to have any way, except as it affects the right of navigation; but I say, with this rule of law in mind, that every court that has passed on the question has held that the fact that the navigation of the river at this point is interrupted makes no difference in the question, and does not divest the United States at all of their authority over the river from its mouth to its source.

Secretary TAFT. Judge, I suppose that which you are discussing relates only to the permits affecting the withdrawal of water from this side?

Judge POTTER. No.

Secretary TAFT. You would not contend at all that the power of the Government was not absolute to exclude electricity from the other side?

Judge POTTER. No; that is not what I am coming to, and it is not the purpose of my argument to discuss that. I am coming to another proposition.

Now, the United States being one of the joint custodians, the other one has the same rights, not only to their half or side of the river, but it is a fact that each of them is a holder, and the British Government has the right to say as to the length and breadth and width of the river, what may be done so far as it may be affected as a navigable stream, and representing the rights of the people, or rather subserv-

ing the rights of the people in it as a highway. Now, let us see. If this was simply the question of admitting into the United States some power from Canada, the State Reservation Commissioners would have very little interest in it; but it reaches further than that. If you permit these gentlemen to bring into this country this power, what happens? Why, it is spread out all over the State of New York, and perhaps into other States. Large investments are made. The Canadian people must make large investments in order to introduce it into the United States, and to provide it. Now, what is the situation and what will it be? It is idle, I think, to talk about the mouths of these applicants being closed. Theoretically I agree with you, Mr. Secretary, that they ought to be closed, but they will not be closed.

We know too well what has happened, and what will always happen, that, having this possession, which is sometimes called nine points of the law, they will insist that they ought to be recognized to retain it. It is not a question of the United States alone, nor chiefly, that I have in mind. Suppose the sentiment upon the Canadian side is what we seem to find it upon the United States side, that the large majority of the people in each country want Niagara Falls preserved, preserved at least just so far as it is possible at this time, and to protect the rights of the people who have vested rights, these rights that we hear about being vested. They never are vested as against the United States in this case: but rights of a kind, possessory rights, which they have obtained.

Suppose the sentiment upon the Canadian side is just as strong as here, and they want to curtail the taking of water; they want to curtail it just as far as it is possible. What will you have? You will have an appeal from these interests on the Canadian side and from the American side. I am not criticising these gentlemen who are interested in these large investments. They are doing what other people do, trying to get what they can: and we are here simply as representatives of the State of New York to say that that good thing shall be limited? What will be the answer? What will they say if the Canadian government should undertake to restrict them?

Secretary TAFT. The State of New York has not imposed any great limitations, has it?

Judge POTTER. No; but the sentiment of the State of New York has been shown by the recent action repealing certain charters or limiting them. That is all we are after. That is our purpose, to limit this as far as possible.

Secretary TAFT. There was not any effort at limitation until this Congressional action was taken, was there?

Judge POTTER. No; that is true. These gentlemen had their own way in getting their rights, as other people would have done under the same circumstances, I presume.

Secretary TAFT. I asked that question with a view of knowing whether any of the people who are investing money there had any reason to suppose there would be a limitation until Congress had acted?

Judge POTTER. They had no reason, except that I assume they knew what the law was, and what might meet them in the future, and they took their chances. That is all.

Secretary TART. The charters which have been granted were very much more extensive in the amount of water to be used than the water that is now actually used, were they not?

Judge POTTER. There is a limit now, I believe, in every case. On the New York side I believe that is a fact. There were some unlimited charters that have not been kept alive or have been repealed. It is possible that some that remain are unlimited—I am not sure—but those who are drawing water are limited, I believe. Now, the appeal would be made to the Canadian government by these people, who would say: "We have invested our moneys in this country, in Canada. We have invested in the United States. We have delivered power to them and they have invested large sums of money." Now, it shuts the door, almost, as we know, not in theory but in fact, which is more important than theory in these particular matters. Now I say that the comity of nations and the courtesy that is due them should lead you to be very cautious, as I have no doubt you will be, in maintaining this status quo which this legislation is intended to accomplish—simply to leave it where it was, not interfering with the property rights, or possessory rights any further than is necessary until such time as it could be finally adjusted with the powers which have the control of the matters finally.

That is the question, as it strikes me, that both nations should be left unhampered so far as it is possible. If there was an emergency, if there was an exigency existing on the side of these gentlemen whereby they must have it at all events or something was going to happen, they would have a little stronger appeal to your sympathies, if not to your discretion; but there is no emergency here. This matter, it is presumed, will be disposed of, and certainly it was the intention of the act that it should be disposed of within the three years from the time the act was passed. My appeal to you is that you so exercise your discretion and your judgment that the purpose of this act shall be best preserved and conserved, and that the matter shall stand in statu quo until such time as it can be finally settled. I appeal to your discretion. I recognize your authority. I recognize your right and your justification to do that which in your best judgment should be done. I simply appeal to you on behalf of the State commission to exercise that discretion in preserving one of the grandest things on earth, one in which the State of New York has invested millions of dollars, one which they are struggling now, I am glad to say, to protect. I am willing that every just thing should be done in behalf of these gentlemen, but justice does not require to-day that this application should be granted.

Mr. McFARLAND. I would like to introduce next Mr. F. W. Stevens, who represents a committee of the Chamber of Commerce of the city of New York.

STATEMENT OF FRANK W. STEVENS, REPRESENTING A SPECIAL COMMITTEE OF THE NEW YORK CHAMBER OF COMMERCE.

Mr. STEVENS. Mr. Secretary, I appear here on behalf of Mr. Francis R. Appleton, Mr. Charles M. Dow, and Mr. George Haven Putnam, a special committee appointed at a regular meeting of the Chamber

of Commerce in the city of New York, to represent that body in the matter of the preservation of the Niagara Falls.

The Chamber of Commerce last February passed very strong resolutions upon the subject of the preservation of the Falls in all of their grandeur and beauty. I have the resolution here, stating that it was opposed to the use of the waters of that stream for manufacturing purposes at the Falls, and it is on the strength of that resolution and the instructions of this committee that I am here to oppose at this time the grant of any permit at the present time for the introduction of electricity from Canada.

Now, the remarks you have already made have narrowed the field of discussion very measurably, and the remarks which Judge Potter has made have to some extent anticipated the facts which I shall endeavor to present to you; but each gentleman, of course, has his own way of presenting the same idea, and therefore, in different language, I shall present perhaps the same ideas to some extent that Judge Potter has presented, but before doing so I wish to say that having been for some years connected in a very moderate way with the commissioners of the State reservation as counsel in certain minor matters, that the commissioners of the State reservation at Niagara have uniformly and consistently from the first, in the State of New York, opposed all grants on the part of that State to power companies to take water from the Niagara River.

The proceedings of that commission are very full upon that point, and I do not know of any application—there may have been one or two minor ones—but certainly all of the important ones were opposed with all of the vigor that commission could bring to bear, because the gentleman who was the president of the commission at the time all these charters were granted by the legislature, Mr. Andrew H. Green, now deceased, was a man whose heart and soul were thoroughly in the work of preserving all the scenic beauties of Niagara River unimpaired.

Now, sir, to come down directly to the statute under discussion, there is no question, as you have already stated, in various ways, as I understand it, that the principal object of this act is to preserve unimpaired the falls of Niagara.

Secretary TART. It reads "An Act for the control and regulation of the waters of Niagara River, for the preservation of Niagara Falls."

Mr STEVENS. And by the report of the Committee on Rivers and Harbors of the House of Representatives, so far as that report could give any instructions to you, I believe you are directed to make a strict construction of the provisions of the bill. Now, it is undoubtedly true that Congress recognized that there were serious difficulties of a very grave nature with regard to utterly stopping the diversion of waters from that stream. It is undoubtedly true that it did not feel that it could by a bill or by its legislative enactments control all those questions, and for that purpose, of having those questions settled fairly and justly, the subject was committed to you and your discretion. The bill confers large discretion upon you, and the question at this time is, what consideration should influence your discretion in the matter. It is to those questions that I propose to address myself.

I do not deny, sir, but what gentlemen who have invested their capital in the United States are entitled to great consideration, and I probably would give to them as great consideration as any person in this room, as will appear directly from the course of my remarks. I do not deny, sir, but what the demands of people residing in the vicinity of Niagara for power are entitled to some consideration. What weight is to be given to them is another question. I do say that the primary purpose of the act being to preserve the waters of Niagara unimpaired, that that is the paramount purpose of the act, so far as it can be considered without doing actual injustice to people. Now, if it comes to the question of how much power is to be introduced into this country, whether 157,500 horsepower, or 360,000 horsepower, that is a matter of perfect indifference to me on this occasion, because it is a matter of mere detail: and upon this question your information and your knowledge will be based upon official reports, and will be infinitely superior to anything I could say to you.

There is another consideration, and that is how far the diversion from the stream of something like 13,000 cubic feet per second, which I believe is 157,500 feet recommended, I believe by Mr. Kutz, will injure the scenic beauty of Niagara Falls at this time. To that question I do not propose to address myself. Naturally, from investigation and from personal observation, I have very strong views upon that question, but that is a matter upon which you can obtain a great deal better information than anything that I can say here. But the point to which I wish to call your attention is, what effect beyond these two considerations it will have upon this matter and upon this controversy, if you at this time grant any permits whatsoever.

Now, just a word, sir, with your permission, upon the question of how your intent is to be guided upon this act.

I do not say this hoping to enlighten you upon the subject, because undoubtedly you have given the subject far more consideration than I have, having the burden devolving upon you to make the decision. I merely state what I view to be the proper interpretation of the act, so that you may be possessed of my views, and see how I look at it, for the purpose of saying whether the views I shall present here have any force or effect. In the first place, you are not directed to grant any permit whatsoever, and the act is clear upon that point. In the second place you are, in the fifth section of the act, given explicit power to revoke any permit given, showing that contingencies might arise which would indicate that you had inadvertently or by mistake granted a permit which should not have been given.

Now, for what possible reason would you wish to revoke a permit? The only possible reason that I can conceive of is that you have granted a permit which, unknown to yourself, has to some extent impaired the grandeur of Niagara Falls. Whenever you grant a permit for 1 horsepower or 160,000 horsepower, you unquestionably do something beyond granting that permit. It has a tremendous effect upon the future of the question, and it is to that future that I desire to call your attention. In the first place, I say that every permit which you grant here, although in theory of law it is revokable, is absolutely irrevokable. I say that will be the result. They fasten upon that stream for all time—to make the diversion of that amount of water. Why? When this bill was passed, and when

you took upon yourself the burden which it imposed upon you, you found existing upon the American side two power plants—the Niagara Falls Power Company and the Niagara Hydraulic and Manufacturing Company plant. The bill absolutely shut them off, as I construe it, from diverting any waters.

Have you, sir, for an instant—of course, I am not asking you for an answer at this time at all, but am appealing to your consciousness—have you for one instant considered the possibility of shutting those plants off from exercising the powers they have been exercising? I apprehend not. Those two plants have never been in a moment's danger of being shut off under that act, and they never will be in a moment's danger in all the future from any legislation of Congress. The respect for the investment of capital in this country is too great to permit any such thing as that. Nobody asks it. Certain gentlemen do want the stream unimpaired, but, as Mr. McFarland has very fairly said here, they do not want it done except by paying these gentlemen for their investments.

When you grant any permit in this case you sanction, by law, the use of those waters irrespective of the effect upon the waters of the stream. You not only sanction the investment of the capital which is made by these gentlemen, but you are encouraging the investment of other capital throughout the United States.

You are encouraging, sir, the building of lines of street railroads; you are encouraging the building of factories; you are encouraging the settlement of artisans, the building up of homes. We say, sir, that neither you nor any other man of fairness and justice in this country would ever for a moment contemplate taking back from those people their means of subsistence, their means of transportation, their means of manufacturing, which have been once given in the exercise of your discretion. When you grant this right, sir, you say to these people "Go on and build factories." Otherwise the right is of no value. You say "Go on and build street railroads, dependent upon this source of power," and I ask you, sir, and I ask every fair-minded man if, when you grant 157,500 horsepower to come into this country, if that is ever going to be deprived of coming in here by any act of yours or by any act of any successor or by any act of Congress?

Secretary TART. Does not your argument carry you a little beyond the point to which you use it?

Mr. STEVENS. Not in my judgment; it does not, sir.

Secretary TART. This money which has been invested on the other side has been invested on the faith of a free opportunity to import that electricity. The recommendation of Captain Kutz was only as to money actually invested or money actually involved in investments. As, for instance, I assume if a man builds three stories of a house, the money required to put on the roof is, so far as this discussion is concerned, as much actually invested as if it had been actually expended. Now, if it be true that this money was invested on the faith of a power to introduce this electricity into the country, are not the arguments in favor of allowing them to come in just as strong as they would be in favor of maintaining the permits, as you say they would be maintained were I to grant them, and the workmen's buildings were to be erected, and all the other plant added which you suggest would be added under those permits?

Mr. STEVENS. It may be, sir; it may be.

Secretary TAFT. In other words, the arguments you are using, strong as they are, in favor of maintaining those permits if issued, are not the same arguments strong to compel the issuing of permits if the money has already been invested on the faith of the power to introduce electricity? I mean money invested before this act was passed at all.

Mr. STEVENS. I do not attempt to minimize the strength of those arguments in the slightest. I propose to meet them fairly. I admit there is a strong argument which can be made for the introduction of electricity at this time, and it is one of those cases where there are complicated views which can be taken——

Secretary TAFT. Was not what Congress wanted to do to accomplish a reconciliation of those interests as far as they thought the Secretary of War could do it?

Mr. STEVENS. What Congress wanted to do was to shift upon your shoulders the settlement of difficult questions.

Secretary TAFT. We will concede that. I do not know that Congress would, but I will concede it.

Mr. STEVENS. I quite agree that the point that the Secretary admits is correct. Now, I have conceded, and propose to concede, the strength of the argument that you have suggested. I do not deny it, sir, but I wish to point out the strength of the countervailing argument, and then it is for you to decide which one is the stronger, and which must influence your decision. A man does not help his cause by belittling his opponent's.

Secretary TAFT. I agree with you.

Mr. STEVENS. He does better by recognizing fully and fairly the strength of the position of the other side.

Secretary TAFT. Because he then becomes helpful to the tribunal which has to make the decision.

Mr. STEVENS. That is the instruction which I have in my pocket from the chairman of the committee, saying: "Present considerations which will be helpful to the Secretary if you can." That is what I am here for: whether I shall succeed or not is a vastly different question.

Secretary TAFT. I hope you may.

Mr. STEVENS. I will try to do so, by advancing one or two more considerations without occupying an undue length of time.

The first argument is this, that by granting these permits you fasten for all time upon this country and upon Canada the diversion of the amount of water which is suggested, or whatever you grant; and you must permit me to say that if your argument—I beg your pardon, I did not intend to say your argument——

Secretary TAFT. That is right. My tentative argument, you could put it.

Mr. STEVENS. I do not mean to say that you have any argument. That was a slip of the tongue. But where is the logical end of the argument which you have suggested? According to the reports of the International Waterways Commission these gentlemen have invested in plants and I have seen the plants with my own eyes and admire the great engineering skill and tremendous scope of the brain which planned them. They have invested there in plants which are capable of producing, if the report is correct, 415,000 horsepower. If they

are entitled, by reason of having invested capital without objection on the part of the United States, to divert water, which will produce 160,000 horsepower, why are they not equally entitled to divert the whole amount? Why are they restricted by act of Congress to 360,000 horsepower? There must be some reason—showing that in the eye of Congress, and in your own eye, if I read aright what you say, they are not entitled to the full benefit of the capital which they have invested. I can not see where the line is drawn. If they are entitled to any recognition at all they are entitled to the full amount.

Secretary TAFT. Is that quite true?

Mr. STEVENS. Possibly not; it looks to me that it is, though.

Secretary TAFT. Suppose the amount which they have invested would result in a reasonable profit if they are allowed 160,000 horsepower, or that division that is suggested by Captain Kutz. That is a condition, an actual condition, and if you allow them a reasonable profit on that, have they any right to ask that they be allowed to invest additional capital, because in their original project they thought they might have all that they could possibly and profitably use?

Mr. STEVENS. Well, I may be mistaken as to the fact, because I have not seen the report; and if I am mistaken as to the fact, what I say goes for naught. I understand the recommendation to be 60,000 horsepower to the Canadian Falls Power Company, 60,000 horsepower to the Ontario Power Company, and 37,500 horsepower to the Electrical Development Company.

Secretary TAFT. I think those figures are practically correct.

Mr. STEVENS. I also understand from this report that at the present time the total actual demands which would be supplied by all those companies in Canada is about 50,000 horsepower, and what I say is based upon that understanding of fact.

Secretary TAFT. Yes.

Mr. STEVENS. Does anybody pretend to say that the Electrical Development Company, with all its tremendous investments there, can make a reasonable profit or any profit upon 37,500 horsepower?

Secretary TAFT. I assume that Captain Kutz's theory was that, added to what it has on the Canadian side, it can.

Mr. STEVENS. I do not know what it has on the Canadian side.

Secretary TAFT. Twenty-five or thirty thousand, is it not?

General MACKENZIE. Somewhere between 35,000 and 40,000.

Mr. STEVENS. Can they make a reasonable profit in the other companies with 60,000 each?

Secretary TAFT. It is my understanding that that is Captain Kutz's idea.

Mr. STEVENS. That is a question of fact that I am not prepared to discuss.

Secretary TAFT. I think Captain Kutz thinks they can. That is the difference.

Mr. STEVENS. That is a question they will talk about.

Secretary TAFT. Yes; we shall hear that.

Mr. STEVENS. You will hear that later. I, of course, shall not anticipate, although I know it will be impossible for me to reply; but I should certainly ache to do so on certain propositions.

Let us take into consideration at this moment another view of the question, and that is this: There are other people who have invested money, or they say they have, upon the strength of supposing that nobody would interfere with them—not that anybody has encouraged them; not that anybody has done anything which in the eye of equity law would constitute an estoppel, but simply without having their attention called to the probable effects of this work they have ignorantly stood by and have not objected. That does not constitute an estoppel by any means. But you must remember, sir, there are two classes of individuals in this country, or two parties, would be the more correct expression. There is one party which, I think, embraces the great majority of the people of this country, and to which I most certainly belong personally, which holds that the Niagara Falls should be preserved unimpaired:

That party has no leadership, no head, except such as is presented by a few who have volunteered, without capital and without funds, and nothing but zeal and interest of the members to depend upon. On the other hand, there is a strong party in this country, not numerically, but strong in brains, strong in capital, strong in enterprise, who think that the view we entertain of it is all rot and bosh. They hold a belief, and I do not question their sincerity. They are entitled to be regarded as being as sincere as I and my friends are. They hold that the proper use of Niagara Falls is to furnish mechanical power, and they urge that the building up of cities and industrial enterprises and homes of workmen is far more important than any sentiment connected with the Falls.

Secretary TAFT. That is not the spirit of the act, is it?

Mr. STEVENS. That is not the spirit of the act. We all concede that; but this act runs for only three years. Then it is wiped off from the book, and then we stand right where we did a year ago, without anything, so far as I know of, upon the part of the United States Government, and nothing to resist the tremendous push, nothing to resist the tremendous impetus of these gentlemen of enormous capital, which will help to carry out their views and help them to take Niagara Falls. You know perfectly well, I know, and everybody in this room knows, and it is a proposition upon which these gentlemen confidently count, and they count correctly, that the mere unorganized opposition of sentiment and feeling on the part of the people who do not know the exact facts, could not count in the long run against their tremendous ability, power, and money—and I do not allude to that in disrespectful terms—but for that reason—

Secretary TAFT. I should not agree with you there. My own impression is that the popular will finds methods of expression.

Mr. STEVENS. The popular will finds methods of expression, of course. The popular will has found methods of expression in this case, based upon knowledge of one fact, that the Falls are in danger, and they want the Falls preserved. That is what this enormous expression of opinion means, sir, and in my judgment it is entitled to the fullest respect in that regard.

Secretary TAFT. It is entitled to respect so far as it embodies the expression of the act itself, but the influencing of quasi-judicial offi-

cers by popular expression in a question that has to be solved with respect to the rights of parties—quasi, if not vested rights of parties—is not ordinarily regarded as the best means of reaching a safe conclusion.

Mr. STEVENS. I do not regard it as any means of reaching a safe conclusion. I do not regard any opinion of these people as of any more weight or importance than the act itself. The American Congress has enacted a law the principal purpose of which is the preservation of the Falls, and the American people, so far as they are represented in these "tons," I believe you call them, of documents, are giving an expression of opinion. I do not believe that in their expression they have intended to hamper your discretion in the slightest degree, but they did want to call your attention to the fact that that discretion, when the evidence on both sides is balanced, should be exercised in favor of the preservation of the Falls, and not for the preservation of invested capital, if it should hurt the Falls. The whole point and force of my argument is that by granting these permits at this time you are doing that which inevitably hurts the Falls.

Secretary TAFT. That is a question of fact, too.

Mr. STEVENS. A question of fact for you to determine.

Secretary TAFT. Yes, sir; that depends upon evidence, and not upon popular expression.

Mr. STEVENS. Popular expression has nothing to do with it, sir.

Secretary TAFT. That is what occurred to me.

Mr. STEVENS. I do not claim that it does.

Secretary TAFT. I have misunderstood you, then.

Mr. STEVENS. No, sir; I do not commit anybody else, but I commit myself to that proposition.

Secretary TAFT. It is possible that I have sat on the bench so long that I regard this as a judicial hearing and not one to be determined by a town meeting. It is possible that popular expression ought to have more weight in a hearing like this than it would have in a judicial hearing toward determining the rights of parties, but it grates a little bit. I do not hesitate to say so. It grates a little bit to have the public, popular expression directed at a man who is called upon to exercise a certain semijudicial responsibility; but I understand what you mean by it, and all you mean is that I am to assume that the act means what it says, and I will assume that.

Mr. STEVENS. That is it; and I am free to say, sir, that if I had the honor of sitting where you sit, and had the same responsibility upon my shoulders that is placed upon yours, I would take precisely the same view you express. I have seen the letter, or a copy of it, which you referred to here, and the sentiment of that letter meets my approval and meets the approval of the committee which I speak for here.

Secretary TAFT. I am very glad to hear you say so.

Mr. STEVENS. I have a letter in my pocket from Mr. Appleton, saying that he thinks the Secretary takes the right view of it in that letter. But our position—and by "our" I mean the committee which I represent here—is that by granting these permits to any extent you are foreclosing a proper solution of the question in the future, as Judge Potter has presented it to you.

Secretary TAFT. And that is a very serious consideration.

Mr. STEVENS. I have attempted to impress upon your mind what I believe to be perfectly true, that the moment you grant these permits you have granted them for all time, and that they will never be removed by any act of Congress, or by any treaty between this country and Great Britain, and for the reason that it does that, for the reason that it gives these gentlemen an added foothold in their effort to capture the whole of the Niagara Falls, any decision at this time granting the right is entirely immature. They are not suffering more than the loss of a little interest on the money, and the action which they ask to be taken at this time may, and in my judgment will, prejudice to a very large extent any future action in the matter, because it grants a right to these people; it is a recognition that their rights are paramount to everything else.

There is much more that I might say, sir, but I am aware that there are many other gentlemen who wish to address you, and I will conclude my remarks here.

Mr. McFARLAND. I now wish to introduce Mr. F. B. De Berard, of the Merchants' Association of New York.

STATEMENT OF F. B. DE BERARD, OF THE MERCHANTS' ASSOCIATION OF
NEW YORK.

Mr. DE BERARD. Mr. Secretary, the Merchants' Association recognizes that the question at issue to-day is essentially one of the construction of the law, the responsibility and the obligations of the Secretary of War to act, rather than a review of popular sentiment or a statement of the feelings of the people, and it accordingly requested former Attorney-General Griggs to present the legal aspect of the case for the purpose of aiding the Secretary to obtain a solution that should not only fully effect the purpose of the law, but which should do essential justice to the various interests, vested and otherwise, which are reasonably seeking protection. Unfortunately, General Griggs had an imperative court engagement which rendered it impossible for him to appear here to-day, and he requested me to state on his behalf that he would either confer personally with the Secretary of War, or would submit a brief.

Secretary TAFT. Mr. Griggs was in my office Saturday, I think, and told me that he could not be here, but that he would submit a brief.

Mr. DE BERARD. Under those circumstances I will not occupy your time, except very briefly. I had intended to point out to you the considerations which Judge Potter and the gentlemen who followed him have stated so clearly, but I will merely amplify very slightly upon certain points which it seems to me might well be considered.

The first point I wish to make is that the act of June 29, 1906, is merely a temporary act. It does not purport to make a final disposal of the case. It is merely a preliminary to final adjudication, if I may so call it, by an international tribunal, by diplomacy expressed through a treaty. It is not necessary for me to enlarge upon the fact that whatever property rights may be taken as the sequence to a treaty or to any act of governmental authority must be properly and duly compensated for. The claim is advanced by the power companies who are now seeking permits that these permits are necessary as a protection to their vested rights.

It does not seem to me that that contention can be sustained. The present act, or the refusal of the Secretary of War to act under the legal authority vested in him, will not ultimately deprive these companies of any of the rights which they may be entitled to, nor definitely or definitively destroy the value of their investments. There undoubtedly have been made large investments. Undoubtedly those investments should be considered, but they should not be considered in such a way as to deprive the act under consideration of all force nor to render impossible the final consummation of the purpose of the act. As Judge Potter has pointed out, the effect of the granting of these permits will be not only to immediately protect the capital of the companies—the investments in question—but will be to create great dependent industries throughout a very large part of the State of New York; and it is absurd to suppose that in the final consideration of this question it can be disposed of without compensation for the very widespread harm to be inflicted upon a large part of the community by the final revocation of the permits and destruction of industries which have grown up under those permits.

Now, Mr. Secretary, assuming that the capital that is invested in good faith must be protected, the issuance of the permits by you is not essential to that protection. On the other hand, the issuance of those permits will tend to make their revocation impossible; and furthermore, the issuance of those permits will tend, in my opinion, very powerfully to destroy the possibility of a settlement of this question by international treaty, for the reason that the development on the Canadian side is not essential to Canadian development. It is developed primarily with capital from the United States for the purpose of promoting industries in the United States. Canada can use but a small proportion of the power, and with what face can the United States go to Great Britain and ask for the consummation of a treaty for the protection of Niagara Falls, if you, Mr. Secretary, promote that diversion by granting these permits under which great American industries will be developed for the benefit of the United States? With what face can the United States ask Canada to surrender its rights when the United States, notwithstanding the expressed will of Congress shall have proceeded in the interval to enlarge the development against which we pretend to be protesting?

MR. MCFARLAND. Mr. Henry E. Gregory is here representing the American Scenic and Historic Preservation Society, and will next address you.

STATEMENT OF HENRY E. GREGORY, REPRESENTING THE AMERICAN
SCENIC AND HISTORIC PRESERVATION SOCIETY.

MR. GREGORY. Mr. Secretary, after the powerful arguments of the previous speakers there is little for me to say, except that I acquiesce in and indorse their statements. The State of New York has done more than any other agency for the preservation and protection of the Falls of Niagara. In 1885 it established the State reservation at Niagara, and placed it under the management of a board of commissioners, which has ever since been engaged in antagonizing—not ever since, but during ten or fifteen years at least it has been engaged in antagonizing—the corporations that went up to Albany by their representatives, from time to time, to obtain charters and rights to

the use of the waters of the Niagara River. The man who did more than anyone else for Niagara in New York, especially in connection with the reservation, was Andrew H. Green, who was also the founder of the American Scenic and Historic Preservation Society, which I represent here to-day on short notice, the officers being obliged to be absent.

All that has been said by the previous speakers, as a rule, meets with my approval, and this organization will indorse their statements. The organization which I represent is a corporation under the laws of the State of New York, but it has a national scope. Its aim is to resist not only corporate attacks upon all great scenic objects in this country, but individual assaults. It has aimed to protect the Adirondack forests from the devastation of the pulp-mill companies, private enterprises, and railroad companies. It has sought to protect Watkins Glen, and certain historic and interesting spots along the Hudson River. It is recognized throughout the State as an organization that does much good in that line. It has taken up the work of the reservation commissioners, indorsing it and supporting it, and it comes here to-day and enters its protest against any further diversion of the waters of Niagara in the interest of private enterprises, however meritorious; and it especially antagonizes and protests at this time against the introduction of power generated on the Canadian side. The reasons have been already stated.

I am only one of that unorganized and leaderless majority that stands such a small chance of accomplishing anything against organized capital, intrenched behind its powerful bastions, and only one of that great number of Americans who insist that there is something in sentiment; that if it had not been for sentiment we would not be, any of us, where we are to-day. Why, sir, if such a country as Greece had such a natural object as Niagara Falls, the history of the world would have been affected by it. A well-known writer in England has said that if such a natural object had existed in the Severn or the Thames, the emotion of the sublime would perhaps have been earlier developed, and the course of English literature would have been changed, to some extent at any rate. Here in this country, where capitalism is so prevalent, and mammonism is so dominant, the time is opportune for the Secretary of War, in the exercise of the discretion given to him by Congress, representing the great Republic, to notify the corporations that further diversions of the Niagara River must cease. Now is the time, as the previous speakers have said.

The act of June 29, 1906, is provisional and temporary. There are only two ends in view—for Niagara Falls. Either, by the gradual withdrawal of water, they will eventually become so diminished and reduced as practically to be destroyed, or they will now, by your action, and the further action, perhaps, of Congress and the Secretary of State, be placed in such a position that their ultimate protection will be assured. The only salvation—the only clear and complete salvation of the Falls is through international protection; and this act of Congress had that in view, for in the fourth section it requests the President of the United States to open negotiations through the Department of State with the British foreign office looking to the eventual preservation of the Falls and river of Niagara by international agreement. This is the great end in view, and your

action will further that end, if you insist now upon refusing to grant permits for the introduction of power from Canada. The reasons have already been stated much better than I can state them. The arguments are clear and unanswerable, it seems to me.

Consider that the Niagara River is an international boundary. Consider the complications that may ensue in the unforeseen eventualities of the future, when we might be involved in some controversy with Great Britain, requiring diplomatic treatment. Then consider, if these rights shall have been granted to Canadian companies, what our position would be. No, sir; the only position to take, in order to avoid possible international complications and diplomatic embarrassments that might eventually lead to hostilities between the two countries, is to prevent them now—to refuse to grant these licenses now. Let the negotiations begun by the Secretary of State go on; let the people of Great Britain see that on this side of the water, at any rate, there is a strong national sentiment in favor of the preservation of the Falls, and there will be eventually no difficulty in the securing of a treaty preserving the Falls for all mankind and forever and forever. That is the main purpose of this bill. It is not antagonizing invested capital. I recognize the high position of these gentlemen who come here. I know Mr. Stetson is one of the most prominent citizens of New York, prominent in affairs, prominent in the church, and I will say nothing against any one of these gentlemen, personally or otherwise; but I will stand on popular rights. The people have a prior right here. The Falls belonged to the people before the corporations were ever heard of.

The people are the primal owners, and they come here with a much stronger right and stronger claim to consideration than do the corporations. The corporations are the intruders, if anybody. They are the trespassers. New York having been unable to protect the Falls, as we have seen, the United States has placed them under the broad ægis of its protection, and now we shall see whether the United States is not strong enough to protect the Falls effectually and for all time. The matter is too important to be dismissed in a few words. I am very glad the other speakers have so carefully and so skillfully considered the different aspects of the case. I submitted a brief myself, last April or May, to the Committee on Rivers and Harbors, in which I considered the whole legal status of the matter.

Secretary TAFT. Will you file a copy of that?

Mr. GREGORY. Yes; I stated in that brief that the President has unlimited power in the negotiation of treaties; and backed by public sentiment, as he would be in insisting on some such treaty as this, there can be no possible doubt that it would eventually become the supreme law of the land.

Mr. McFARLAND. We have yet one speaker, Dr. John M. Clarke, State geologist of New York, who has, perhaps, studied the Falls more intimately than any other man here, and he will now address you.

STATEMENT OF DR. JOHN M. CLARKE, STATE GEOLOGIST, OF NEW YORK.

Doctor CLARKE. Mr. Secretary, it has been in the line of my opportunity and my duty, officially, for the last twenty years to familiarize myself with the industrial development as well as the physical and

geological conditions at Niagara. I may say that I have grown up along with the power companies, although to-day I do not know a single individual connected with any of the companies, and therefore whatever I may say will be entirely free from personal bias.

I have endeavored, sir, to figure out as best I could, with expert assistance of very competent hydraulic engineers, the situation at Niagara—the amount of flow, the present diversion, and the probable results therefrom. It has been some seven years since, I think, that I first sounded a word of alarm in regard to what seemed to me a further devastation of Niagara, and I have hammered away at it, as opportunity permitted, ever since. I have had expert assistance. I am not given to or likely to be carried away by matters of sentiment. It is not exactly in my line. I am dealing with hard facts. We are endeavoring in New York, in the department which I have the honor to direct, to develop the economic resources of the State, and I have endeavored to bring together the facts which I think are in practical accord with the results that have been presented publicly by the International Waterways Commission, and which I should like to file without reading them at length to-day. They are, in a general way, to this effect: That when diversion from Niagara, from all causes, has reached a maximum of 40,000 cubic feet per second there is probably no escaping the fact, from whatever way we may look upon it, that the water will be well down upon the rock bottom of the American Falls between Prospect Park and Goat Island. I think the facts that I can supply now in detail will fully verify that conclusion. And into such a conclusion as that no sentiment can enter. It is a question of whether we have the facts accurately.

Secretary TAFT. Is there not a natural operation going on, Professor, which reduces the water on the American side?

Doctor CLARKE. I would not say that there was, Mr. Secretary. There is at the park, or rather there has been since the power companies began their work, since the Niagara Falls Power Company established its intake, an easy formation of ice dams, which shows in how delicate equilibrium the American Falls are—an ice dam which will turn off in the winter the entire flow of water from the American side, and leave it so bare that one can walk dry shod from the American shore to Goat Island. That has happened frequently in the last few years, where twenty years ago it was an occurrence of the greatest rarity. You understand, sir, that the American Falls are the delicately adjusted falls, and they represent not more, perhaps, than one-fifth of the entire volume of the river.

They are the falls that are beginning to show the danger first. The bottom of the river, the rock sill of the river slopes from the east toward the west. It slopes from the American side down toward the Canadian side 18 feet; and therefore any fall, or any large diversion of water, may be practically imperceptible on the Canadian side, while very perceptible on the American side.

Secretary TAFT. Do you know where the water is taken on the Canadian side?

Doctor CLARKE. The three Canadian companies take water from different points on the Canadian side. It is my impression that none of the water—I do not know whether I shall agree with the Waterways Commission in regard to this conclusion or not—but it is my impression that none of the water diverted on the Canadian side

would materially affect the flow on the American side. I think it is practically all taken below what may be called the parting of the waters. There is a fall of approximately 56 feet from the summit of the waters down to the crest of the Falls.

Secretary TAFT. In other words, the only effect of the Canadian withdrawal of water would be upon the Horseshoe Falls?

Doctor CLARKE. I think that is approximately an accurate statement. So far as my evidence goes, I do not see in what way it would affect the American Falls, unless by some obstruction, by the occurrence of these frequent ice dams, or some cause of that kind. That is a pretty complicated question, sir. I should not wish to go on record as replying positively one way or the other; but we must bear in mind all the time that those Canadian Falls are ours, or half ours.

Secretary TAFT. I understand; but of course the effect upon the Falls of the withdrawal from the Canadian side would be much less, proportionately, if it did not affect the American Falls at all, in general appearance and scenic beauty, than if it affected the whole river, would it not?

Doctor CLARKE. I am not prepared to say that the Canadian diversion affects the American Falls, but I am prepared to say that the American diversion does and will seriously, when those companies are producing to their full extent, affect the American Falls. I could embody all this in a brief, if I might be permitted to submit it to you.

Secretary TAFT. I would be glad to see it. You say that one-fifth of the river goes over the American Falls?

Doctor CLARKE. Approximately; yes, sir.

Secretary TAFT. That would make four-fifths over the Horseshoe Falls?

Doctor CLARKE. Yes, sir.

Secretary TAFT. Four-fifths would be how many cubic feet per second?

Doctor CLARKE. Assuming it as 224,000 cubic feet, that would be 160,000 cubic feet per second—approximately that.

Secretary TAFT. 160,000 cubic feet per second?

Doctor CLARKE. 165,000 or 175,000.

Secretary TAFT. And 13,000 cubic feet would be some 6 or 8, or perhaps $8\frac{1}{2}$ per cent, would it, if that were withdrawn from the Canadian side?

Doctor CLARKE. 13,000?

Secretary TAFT. Yes.

Doctor CLARKE. I do not grasp your point, exactly, Mr. Secretary.

Secretary TAFT. My point is this: I assume, for the purpose of the statement, that generally you were correct in saying that the proposed withdrawals on the Canadian side would affect only that side, because it is below the source of supply for the American side and above the mouth of the Horseshoe Falls?

Doctor CLARKE. Yes.

Secretary TAFT. The Horseshoe Falls discharge say 175,000 cubic feet a second. If the amount to be taken were 13,000 cubic feet a second, it would mean a reduction in the volume going over the Falls—the Horseshoe Falls—and as the American Falls would not be affected at all, that might be left out of consideration. It would mean a reduction in the volume of somewhere between 6 and 9 per cent, would it not?

Doctor CLARKE. Yes; I presume it would.

Secretary TAFT. Have you any idea how much that would affect the appearance of the river?

Doctor CLARKE. Well, sir, you have already granted a diversion on the American side of 13,433 cubic feet per second on the American side alone?

Secretary TAFT. Yes.

Doctor CLARKE. That, of itself, is a very important item in the subtraction of water from the American cataract, because the water has to come from the American side alone.

Secretary TAFT. That is now being withdrawn?

Doctor CLARKE. Yes.

Secretary TAFT. I was addressing myself to the Canadian side now.

Doctor CLARKE. Yes, sir; I do not know that I could answer that question out of hand, from any notes I have in my hand at the moment, as to just what difference that would make. I should want to sit down and figure it out.

Secretary TAFT. I should like very much to hear from you on that later.

Doctor CLARKE. The point I wish to make is this, and I have endeavored to be careful in this matter. In my judgment, all the diversion that is provided for in this law to be made from the Niagara River, either diversion from the American side or transmission from the Canadian side involving diversion—that is, up to the 160,000 horsepower line—could be carried out without bringing the waters of the American side down below the safety line, without bringing them down any farther than the edge of the rock bottom; so much water could be taken out and the Niagara Falls would be still flowing on, and all the bottom of the river would be covered. Of that I feel comparatively sure, but that amount of water would be gone. That is not the Niagara in its original beauty. What remains is not all of the falls of the Niagara.

And, furthermore, I desire to make this point. I have not very much enthusiasm, naturally, over nature that is complicated with even these powerful developments of mechanical ingenuity. I admire them. I wonder at the brain that can work them out. I have followed them quite closely, but I, personally—and I am speaking only personally, as a lover of nature and as a geologist who has always regarded the Niagara as one of the world's greatest phenomena—I would prefer to see all the power companies erased from Niagara. I believe it is quite within the powers of the Government to do that. Indeed, I believe there is precedent for so doing.

Secretary TAFT. If they were not there we would not have these troublesome questions; that is certain.

Doctor CLARKE. Then there is this point, which I submit for your consideration. Within a radius of 100 miles of Niagara there is ample undeveloped power to manufacture all the carbide, carborundum, and breakfast food, and so on, that the world requires. Within a radius of 100 miles we have a large amount of undeveloped hydraulic power. It is not necessary to despoil Niagara. It is not necessary to transmit power from Canada into America. It is not necessary even to continue the power companies now in existence on the American side.

If it is entirely proper, I would like to make a remark in regard to the standing before the public of the companies—some of them, perhaps, applicants for power.

Secretary TAFT. I would be glad to hear anything about that.

Doctor CLARKE. I have had something of personal familiarity and acquaintance with several of these companies, it having been my lot to live at Albany for some years, and to have seen them come and go, and come again and go, sometimes with the spoils of victors and sometimes leaving their spoils behind them. There is a difference in the public morale, if I may so express myself, of some of the companies. It has been remarked, in previous hearings, that one of the companies has contributed very largely to the beautification of Niagara Falls. It has kept faith with the letter and spirit of its charter. I believe that is, on the whole, correct. I believe the Niagara Falls Power Company has kept its faith with the people, that it has carried out the spirit and the letter of its charter and it has gone beyond that. It was my fortune years ago, as a boy, to grow up alongside of the organizer of the Niagara Falls Power Company—W. B. Rankin. He was the only man connected with any of the power companies that I have had the honor to know, but that does not in any way influence my judgment, except that I have known of the actions and conduct of the company. I believe I can speak in only the highest praise, so far as my knowledge of their public conduct is concerned; but I do not think the Niagara Falls Power Company, sir, will ever be without sin as long as it continues to waste two-thirds of the water it diverts for power purposes—nor will any other company.

Secretary TAFT. Is that because its tunnel is not low enough?

Doctor CLARKE. Yes, sir; because two-thirds of the fall is wasted.

The Niagara Falls Hydraulic Power and Manufacturing Company has a power plant and tailraces there—an eyesore and offense to the public. I have no doubt the company has lived up to the letter, and perhaps the spirit also, of its charter.

Secretary TAFT. It has not completed its plant, so that it is a little hard to tell, is it not, whether it is going to be an eyesore or not?

Doctor CLARKE. Yes, I presume that is entirely correct. I should have made such a reservation. It has been an eyesore for many years past and it is a thing which has attracted more attention than anything else except the advertising signs which were put up on the Canadian side for the benefit of the American tourists, and which have now, I believe, been taken down.

There is another company, the Niagara Falls, Ontario and Lockport Power Company. I take the liberty of making a statement which is a matter of common knowledge. I think we are dealing entirely with facts in this case. The Niagara Falls, Ontario and Lockport Power Company was chartered in 1894, the charter being signed on the 31st of May of that year. The charter required that it should begin work in good faith within ten years, and the company came to the legislature of 1904 with its charter expiring by limitation. It was chartered as a power developing and manufacturing company. It came to the legislature, as I say, with its charter expiring by limitation, and no work done. It asked a new charter with very greatly extended powers. This charter passed both houses of the legislature, and it went to the

governor. It is a well known fact, and I state it as a matter of evidence, that this company made an offer to the governor of the State of New York, through one of its representatives, of a quarter of a million dollars to the State treasury if he would sign that charter. He forthwith vetoed it.

I call your attention to the fact that that veto was signed on the 15th day of May, 1904. There were six days left in which the old charter was good, in which the company could go to work in good faith. I am informed that it did undertake to do so. I know it came back the next year, and I also know that proceedings in the legislature of that year, although this bill was progressed, were somewhat malodorous, and the present governor of the State stepped forward and stopped the progress of the bill. I do not know under what legal authority this company is doing business. I simply make these remarks for your consideration.

Secretary TAFT. You mean that its right has expired?

Doctor CLARKE. I would not venture to say. It had under the old charter, as I understand the matter, six days in which to do work in good faith. No new charter was granted to it. It has a referee's decision in its favor, I believe, and it is under the supervision of the New York State Gas and Electricity Commission, but at the same time it is entirely proper to inquire into the standing of this company, and the authority under which it is doing business, before granting any rights to transmission.

Secretary TAFT. Is that the one that has built a line to Syracuse?

Doctor CLARKE. I am inclined to think it is, sir.

A VOICE. Yes, sir; that is the one.

Secretary TAFT. And it is the American side of the company that you refer to now?

Doctor CLARKE. Well, I am referring to the old organization. I do not know just what the standing of the organization is.

Secretary TAFT. As I understand, there are two companies—the company that makes electricity on one side, and then there is a company that transmits it to the United States on the other. I do not know how much they have invested—perhaps one million or more—in transmitting plants. It is that American company?

Doctor CLARKE. It is the old American company to which I had reference. What its relations to the Canadian organization are, explicitly, I can not say, as those relations have become somewhat complicated.

Secretary TAFT. I would be glad if you should file what you intended to file, and also a statement with reference to or in answer to questions that I suggested as to the percentage of loss to the volume of water coming over the Horseshoe Falls, if 13,000 cubic feet were withdrawn from the places where it is now proposed to withdraw them on the Canadian side.

Mr. McFARLAND. With your permission, Mr. Clinton Rogers Woodruff, our first vice-president and acting secretary, will now close for our side.

Secretary TAFT. You prefer to close now?

Mr. WOODRUFF. I am under the necessity of leaving at 4 o'clock.

Secretary TAFT. I do not know how long the gentlemen will take who represent the various companies.

Mr. WOODRUFF. I should prefer to speak after having heard them; but if the arguments on the other side extend beyond 3.30 o'clock it would be impossible for me to be here.

Secretary TAFT. I rather think the arguments will go on, probably, to-morrow.

Mr. WOODRUFF. Then, with your permission, there are two or three things I should like to say now.

Secretary TAFT. But I do not think you ought to give up your closing.

Mr. WOODRUFF. I will leave that to Mr. McFarland, then, as in many respects he is the best-informed man on the subject.

STATEMENT OF CLINTON ROGERS WOODRUFF, FIRST VICE-PRESIDENT AND ACTING SECRETARY AMERICAN CIVIC ASSOCIATION.

Mr. WOODRUFF. There are one or two phases of the subject that I should like to address myself to, and one is as to the weight to be given to the letters which have been filed in your office by various people throughout the country interested in this subject. I asked General Mackenzie, and he was kind enough to get me one or two packages of them. I suppose they were selected quite at haphazard, without knowing what they contained.

General MACKENZIE. Yes.

Mr. WOODRUFF. In running over them I find that a large number express a direct opinion as to the method to be pursued in preventing the further desecration or depletion of Niagara River. In other words, they were directed to the point that is before you. It has been said by one or two speakers, and I want to have it borne in on your mind, that the burden of preserving the Niagara has been transferred from the shoulders of Congress to your own shoulders, and that the act of June 29, 1906, is designed for the preservation of Niagara. The method is for you to determine. I take it for granted that there is no division of opinion as to the necessity of preserving the Falls. That is what the act was intended for.

These letters go to express the opinion that the Falls can only be preserved by preventing any further admission of power from the Canadian side, or from the Canadian companies, either in immediate operation, or likely to go into operation in the near future.

Secretary TAFT. They are founded, are they not, a good deal on circular letters that Mr. McFarland has sent out?

Mr. WOODRUFF. Most, I presume, are. Some seem to be mere expressions of opinion, having seen that the matter was up before you for consideration.

Secretary TAFT. Do you not think it would be fair for me to weigh those expressions in the light of the statements in Mr. McFarland's letters?

Mr. WOODRUFF. I should say it was fair to read the expressions in the light of the persons who wrote them. When a man so careful in his utterances as Governor Pennypacker, of Pennsylvania, who, like yourself, has served for many years with great distinction on the bench, and, when he assumed the care of governor of Pennsylvania, did so with the reputation of having been our best *nisi prius* judge—

Secretary TAFT. I want to ask you, in fairness, if you did not know anything about it, if you had not looked into the law and the evidence, and were told that the taking of water from Niagara proposed here under these applications would be like taking all that goes out of the Hudson, the Susquehanna, the Delaware, and the Potomac rivers, you would think there was anything left of the Niagara?

Mr. WOODRUFF. I should say the point was this—

Secretary TAFT. No; just a moment. Would you not think that destroyed Niagara utterly?

Mr. WOODRUFF. I should say if the person who made that statement was a man who occupied a prominent position, whose opinion was entitled to weight, it would have very nearly that effect.

Secretary TAFT. And if, instead of that, it turns out that it affects the flow over the Horseshoe Falls about 6, 8, or 10 per cent, do you think that is a fair method of soliciting popular opinion?

Mr. WOODRUFF. No; it would not be, if that were the method; but I am not sure that it was. I think your hypothesis, if you will permit me to say it, with all due respect, is hardly a fair one. You have a board of expert advisors, consisting of a commission, of which Colonel Ernst is chairman, and others, and they are in doubt as to the effect that a greater diversion will have. There is no unanimity of opinion on the other side, so far as I am advised. The question before you is how far you can go with safety and not destroy the Falls as they now are; and therefore the expression of opinion that the only thing to do is, as Judge Potter has said, to preserve the statu quo is pertinent. There are a great many appeals there, which under any proper consideration should be excluded, of course; but when men like Henry C. Lea, and others whose names I mention here—and if you will look over them you will see the names of men whose views are entitled to weight—

Secretary TAFT. I quite understand that there are gentlemen who are interested, and properly interested, in preserving the scenic grandeur of Niagara Falls, who do not believe that a drop of water ought to be taken out for mechanical purposes; that it ought all to be preserved because of its proper effect upon the people, and upon the poetry and loyalty, and the patriotism of the whole United States. But I am asking you with reference to what weight I ought to give to people who do not take that position, exactly, but who were naturally aroused when they were told that there was to be taken out of the Niagara River, which is not an enormous river in a sense, all that there is in the Potomac, in the Hudson, in the Susquehanna, and in the Delaware. When I saw that statement I did not wonder that I got these protests. I must say that I do not think it presents fairly the question I have to decide, and that it arouses public opinion on a basis that the facts in the case and the evidence in the case here presented do not really bear out.

Mr. WOODRUFF. I should like to answer that, if I may, by presenting to you a little different point of view from that which you expressed in answer to one of the speakers in regard to your own position, as to whether you sat here as a quasi judicial officer, or whether, in a way, it is taking a town meeting to determine the public sentiment that exists upon this subject. This act is not a mandatory act. There is no obligation resting upon you to grant one single permit for one single horsepower to come into this country. You may do

it, if in your judgment and in your discretion you are of the opinion that the Falls are not going to be jeopardized. This is an act for the preservation of Niagara Falls. That is one thing that is clear. That is one thing that is unequivocally expressed. There is some doubt as to the methods, and the methods are matters within your sound discretion.

Secretary TAFT. Do you not think that it is a question of fact, whether it be discretionary or determined by absolute right, as to how much water is to be taken out under this proposition?

Mr. WOODRUFF. That is true.

Secretary TAFT. Do you not think that circulars which indicate that all of the water in the Niagara is to be taken out would mislead public opinion?

Mr. WOODRUFF. But you are assuming that all of the expressions of opinion are based upon that statement. I have no knowledge that that is so.

Secretary TAFT. I only know the statements that are made in the circulars that were sent out.

Mr. WOODRUFF. I have not seen that statement myself, and I can not speak with knowledge; but I do not think it is fair to assume that all of these statements are based upon that. The hurried reading that I was able to give to the opinions seemed to indicate a variety of sources of information. The public seems to have had a great deal of interest in it. When careful men say that they are of opinion that there should be no further diversion, I think that ought to be taken into consideration, and while it is imposing a great obligation and burden on you, if you are going to eliminate—

Secretary TAFT. I have got to have that. I am not complaining about that. I have to meet it.

Mr. WOODRUFF. That is quite true. If you are going to take these into consideration, as I am sure you are, they ought to be classified; those which merely ask you to use your influence should be properly disregarded, but when there is an expression of opinion, I think it is entitled to be given some weight, just as in trying a case in which a man's character is at stake and in which a long line of testimony is heard as to whether the man had previously borne a good character.

One man will testify in a flippant manner, and another will make a careful statement. You judge of the weight by the manner in which the statement and testimony are given. I think some one should give careful consideration to these expressions of opinion. So far as I have read them, I have not noted the expression in regard to the various rivers which you mentioned. Those that I have come across run all the way from the very simple statement that the writer was of the opinion that no further diversion should be made, to the very excellent letter from Edward D. Welch, who, while he recognized the work that had been done there, said that he felt that when it came to a question between the preservation of Niagara Falls and the vested interests of capital he was in favor of preserving the Falls. [Producing a paper.] Is this the circular letter to which you refer?

Secretary TAFT. There are three of them here. Here they are. Mr. McFarland in his letter of November 5 calls it "A rapidly running river nearly a half mile wide and 18 feet deep"—28,000 cubic feet.

Mr. WOODRUFF. If the extreme that is asked for by the applicants here were granted—that is a matter of mathematical computation. I have not made it, but I assume that Mr. McFarland, who is careful about these matters, has.

Secretary TAFT. “As a matter of fact, running at a velocity of 6 feet per second, it would fill a channel half a mile wide, about 21 inches deep”—instead of 18 feet deep. “A river half a mile wide and 18 feet deep, flowing at a velocity of 6 feet, would discharge 285,120 cubic feet per second, or ten times the amount under consideration.”

Mr. WOODRUFF. I presume you are reading from some official report?

Secretary TAFT. I read from a report that I made when this circular came in.

Mr. WOODRUFF. All this goes to illustrate that there is a very grave difference of opinion between the people who are deeply interested. I take it for granted that all your advisers, as well as yourself, are interested in preserving Niagara Falls.

Secretary TAFT. You may take that for granted.

Mr. WOODRUFF. If you examine the testimony or hearings before the River and Harbor Committee on these various questions you will find that they all came up before that committee, and the question came up, in the preparation of that act, whether they should put in a minimum or a maximum, or allow any diversion at all. The result was the act as it stands, which transfers from them to you the determination of this question; but I want to reiterate with all the force of which I am capable, that there is not a single word in this act which is mandatory. You could to-day write an opinion forbidding the importation of any power or of any further power from Canada, and there is no power under that act which would give the power companies the right to mandamus you to permit the introduction of their power.

We come back, then, to this question—

Secretary TAFT. Let me go back a little, because I think this is important. I do not want to be unfair, but Mr. McFarland asserts in these circulars that the amount to be withdrawn is as much as the Hudson, Delaware, and Potomac rivers combined discharge at their mouths. That was the expression.

Mr. McFARLAND. And I am prepared to prove that.

Secretary TAFT. The mouths of these rivers are estuaries of the sea in which the tide ebbs and flows. They suggest to the mind enormous volumes of moving water, as their introduction here was intended to do. They can not fairly be compared with the Niagara River at all, but, if compared, the least unfair way is to take their volume of discharge during an ebb tide. Exact information upon this subject is not at hand, but cross sections of the estuaries have been constructed and measured, and from these it is estimated that the discharge during an ebb tide is, of the Hudson River at least 650,000 cubic feet; of the Delaware River at least 1,500,000 cubic feet, and of the Potomac River at least 2,500,000 cubic feet, or 4,650,000 cubic feet, or 166 times the volume which Mr. McFarland attributes to them.

Mr. McFARLAND. Is that the volume of those rivers?

Secretary TAFT. You said at their mouths. That is the impression I got from reading the circular, and it gave me the impression that if it were true there wouldn't be any Niagara River left at all. In other words, I do not think that public opinion solicited on such a statement of fact valuable. Suppose, on the other hand, you meant the fresh-water discharges taken up above tide water—not at their mouths, but above tide water. That would be somewhat nearer, but still it would be an exaggeration, because of the Hudson River the maximum is 143,000 and the average 16,000; the maximum of the Delaware is 66,540, and the average is 21,467; and of the Potomac the maximum is 198,000, and the average is 15,069—407,600, therefore, to 52,536. This only illustrates what I mean when I say that expressions of opinion that are not based on an exact knowledge of the evidence, in a matter that has to be determined by the evidence, is not of value to one who is attempting to reach a just conclusion.

Mr. WOODRUFF. I think, however, this fact should be borne in mind—that this is only one of a series of circulars, and it would hardly be fair to exclude all on the strength of one.

Secretary TAFT. I agree with you.

Mr. WOODRUFF. I must confess that I have read this for the first time. I saw the circular but I did not read it before; but I do think the question of public opinion, so far as it relates to the question of the admission of any power, is to be taken into consideration.

You spoke a little while ago in a discussion on a point raised by one of the previous speakers in regard to the question as to the possible compensation which might be accorded to the power companies by reason of your refusal to grant permits damaging them.

I should like to call attention to this fact. There is a great deal of significance in the fact that this duty of preserving the Niagara Falls is imposed on the Secretary of War. It was done advisedly, because the Niagara River forms part of the international boundary. It forms a part of that boundary which in a previous war we know was the center of hostilities, and in the event of future wars may again be the center of further hostilities. Therefore, you are clothed not only with the power which the act of June 29, 1906, gives to you, but with the war power, the great police power of the United States, with all that that means—not only the power to protect the rights and the property of the people, but to protect their most sacred possessions; and if in the exercise of that enlarged police power you should be compelled to expropriate some property, you could do so just as the United States did in the civil war.

A few years ago I had the privilege of going to the Indian Territory with your distinguished colleague, Secretary Bonaparte, to investigate certain charges that had been made in the Territory regarding the administration of affairs there. Among the matters that were inquired into were claims for property taken during the civil war. They were taken at a time when it was impossible to get an act of Congress, and were taken upon the basis of the right to confiscate and expropriate whatever property was necessary to protect the then interests of the United States. So I take it now; with the feeling that exists in Congress, which Mr. McFarland has described to you and which I am willing and ready to corroborate, if you should see fit, as I have no doubt you will see fit when you come to consider this

in all its bearings, to limit materially, and possibly entirely, the importation of power. If there is any damage done, if there is any interference with vested property which the United States Government can properly compensate for because of its taking, it will be done. The good faith of the United States will stand pledged. I have no doubt whatever that if this matter were "put up" to Congress in direct terms it would be only too glad to supply a sum of money to preserve Niagara Falls in all their grandeur.

So you are dealing with the matter not only under the act of 1906, known as the Burton Act, but as the representative of the police or war power of the United States, and that clothes you with extraordinary powers, it seems to me, to preserve what we all agree to be one of the greatest bits of natural wonder, not only in our own land but in the whole world; and I feel that these expressions of opinion all go to show how deep and abiding and how widespread is the interest of the people in the preservation of this natural wonder. I sincerely hope that, should there be the slightest doubt in your mind as to the effect of a further diversion of water from the Niagara River for the purpose of creating electrical power, you will exercise the authority that is clearly granted to you in terms in the Burton Act, and refuse to grant any further permits.

Another point. Why have the companies which are seeking for admission of their power gone to Canada instead of creating that power on the American side? I think it is generally conceded—I speak subject to correction on this point, however—that the companies which are seeking this permission are largely financed on the American side.

Secretary TAFT. I think that is generally conceded, except possibly as to the one that is furnishing power to Toronto.

Mr. WOODRUFF. That is not a matter of my own knowledge, but I take that to be the case. It is perfectly proper for you as Secretary of War to ask why these American financed companies should go to the other side of the international boundary line to put up their power plants. One of the reasons is that our New York Niagara Falls reservation commissioners have been less complaisant in the matter of granting permits for the creation of power and less complaisant in the matter of granting privileges and franchises than the Canadian authorities.

Mr. STETSON. May I interrupt? Mr. Woodruff will permit me to say one word, as he is going away, and I ought to call his attention to the fact that that statement would be absolutely challenged, and to state that no permit has ever been requested of the commissioners and could not be given.

Mr. WOODRUFF. Does that refer to all applicants?

Mr. STETSON. The Niagara Commission, on the New York side, never had a bit of power to grant any such permits.

Mr. WOODRUFF. It could not grant a permit to take water outside of the limits of the reservation.

Mr. STETSON. Nor inside of it, either. They never had any requests.

Mr. WOODRUFF. Mr. Stetson's suggestion or statement, Mr. Secretary, simply causes me to say what I am very glad to say, that evidently they were well advised, knowing what the situation was, and

they did not make application here because they felt that the power did not exist, or because they felt that the application would not be received with so friendly a spirit. The main truth of my contention therefore remains unchallenged. I am advised that they have made no formal application, but you and I both know that very often favors are not asked because of foreknowledge that they will not be granted.

I know, in the State of Pennsylvania, within the last four years numerous pieces of legislation that had been prepared were not presented because Governor Pennypacker was known to be hostile to them. These parties can say that they never made application, but they did not make application because they knew their application would meet with an adverse fate. These companies have gone to the Canadian side, because they feel that they could make better terms there. That being the case, does not that discriminate against our own American commissioners in the State of New York, and put a premium upon the complaisance of the Canadian authorities, by granting to Canadian companies all the rights and privileges which they would have if they were organized and erected upon this side of the boundary line?

One other thought, and that is this: I may be reiterating some of the points made by my predecessors, but I want to preseat them, as Mr. Stevens has said, from a little different point of view, so as to have before you all of the facts in the case. This is a matter of great importance, as it affects not only our own generation, but, as President Roosevelt has said, generations yet unborn. We can only eventually and effectually preserve the falls for all time through international action. Something must be done by the joint action of the British authorities and ourselves. Are we acting as we should when we establish, as we certainly would establish if you were to grant the full request of the applicants here or on the other side of the international boundary line, vested interests so strong and powerful that it would be almost impossible and possibly impracticable to divest them? I submit to you, sir, that in deciding this matter, as you are called upon under the Burton Act to do, you should bear in mind that your action will have not only an immediate but a future effect, and it is wrapped up in a most direct way with the question of the future preservation of these falls. A grant of the applications that are made here would unquestionably tie the hands of our Secretary of State and President in any negotiation which they might undertake with the British authorities looking toward a complete preservation of Niagara Falls.

Mr. McFARLAND. Mr. Secretary, as a matter of fairness, do you not think I ought to have a chance to make some explanation of what you seem to think is a misstatement by me?

Secretary TAFT. Yes, sir; at the close.

Mr. STETSON. In order that there may be no misapprehension as to the relative waters taken from the Falls, I understood the professor to say that it was one to five.

Secretary TAFT. Yes, I understand it to be stated as even more.

Mr. STETSON. A much larger proportion. That is based, I think, on the width of the stream—the flow. It is exactly in proportion to the width of the two streams on either side of Goat Island.

Secretary TAFT. I have heard it stated to be one-tenth and nine-tenths.

Mr. STETSON. I simply wanted to correct any misapprehension.

Judge POTTER. I desire to say, as the question has been raised by Mr. Stetson, that there is no question about what the commissioners of the State reservation have done. Our powers are very clearly defined in the statutes.

Secretary TAFT. I understand you have been consistent in your desire to reduce the amount of water taken, but that the legislature did not always follow your views.

Mr. STETSON. I would like to ask Mr. Potter if he has ever known of a request coming to the commissioners for power.

Mr. POTTER. No; I have been advised that it has, before my time, but I have not had much familiarity with that. But no application, so far as I know, has ever been made. . We have no powers to grant anything, and we refer everything in the nature of power to the legislature of the State of New York.

Secretary TAFT. Mr. McFarland, possibly you would rather make your statement now than to wait.

ADDITIONAL STATEMENT OF J. HORACE M'FARLAND, PRESIDENT OF THE AMERICAN CIVIC ASSOCIATION.

Mr. MCFARLAND. I ask to make this statement simply as a matter of fairness. If I had made the statement in the circular letters (which seems to have excited some ire) that the amount of water withdrawn was equal to the Hudson at Albany, the Delaware at Trenton, the Potomac at Harpers Ferry, the James at Richmond, and the Susquehanna at Harrisburg, do you think it would have been very much less impressive to the people who received it?

Secretary TAFT. I think it would. It would have been with me.

Mr. MCFARLAND. I differ with you.

Secretary TAFT. Here is what you did say: "It is obvious and certain that if the water required to make 350,000 horsepower (as much as the Hudson, Delaware, and Potomac rivers combined discharge at their mouths)." My mind immediately went down to the Potomac at its mouth, as it emptied into the Chesapeake, to the Hudson at New York, and to the Delaware River at Cape May. It really startled me, and I wondered whether I was engaged in the business of wiping out the Niagara River. Then you state on the other side of the circular, "If you have written to Secretary Taft, use this material for inducing others to write at once."

Mr. MCFARLAND. I am in no sense ashamed of it.

Secretary TAFT. It seems to me, considering the facts—I do not mean to say that you intended it—but considering the facts, it seems to me that was an exaggerated and misleading statement. Do you not think it was, yourself, to look at it?

Mr. MCFARLAND. I hardly think I ought to be blamed that you considered the estuaries instead of the mouths. My authority for the statement is Mr. James H. Fuertes, the well-known and eminent hydraulic engineer of New York, who has been engaged repeatedly by the city of New York for important investigations.

Secretary TAFT. Where would you say the mouth of the Potomac River was?

Mr. McFARLAND. I never thought about it. I took it as an engineering statement.

Secretary TAFT. Where do you think the mouth of the Hudson River is?

Mr. McFARLAND. I would consider the mouth of the Hudson River to be at the point at which the water of the North River blends into the water of the East River.

Secretary TAFT. That is below Manhattan Island?

Mr. McFARLAND. Right across from the Battery.

Secretary TAFT. Between Governors Island and the Battery?

Mr. McFARLAND. Yes, that would be one construction of it.

Secretary TAFT. It is not a question of what is actually the mouth, technically speaking, but what this statement would convey to those who read it.

Mr. McFARLAND. I am under the impression that a majority of people who read the statement would have been just as much impressed if, instead of making it at the mouth, as my engineer advised me, I had gone further up and placed it beyond the tidal influence; but inasmuch as this document recited the engineer's view, I wish to file it.

Secretary TAFT. You may do so.

Mr. McFARLAND. I wish to be free from any seeming intention of deceiving you or other people. I had no such intention, and inasmuch as what ever is said here will be telegraphed over the country, if it may be of any assistance to the side we are opposed to, I think I ought to go on record as producing my authority.

Secretary TAFT. I think you ought to.

The document referred to by Mr. McFarland is as follows:

140 NASSAU STREET,
New York, November 14, 1906.

Mr. J. HORACE McFARLAND, Harrisburg, Pa.

MY DEAR Mr. McFARLAND: Your letter was received at my office while I was out at the Lynchburg dam, and was telephoned to me. Naturally I did not have the figures you asked for, but inclose them herein, hoping it may not be too late to serve your purpose.

The gaugings on these streams have not been carried on long enough to secure very accurate data, and hence I refer to them as *estimated*.

With kind regards, very truly, yours,

JAMES H. FUERTES.

Estimated flows of several rivers.

	Drainage area.	Total average flow, per second.	Low-water flow, average dry year.
	<i>Square feet.</i>	<i>Cubic feet.</i>	<i>Cubic feet.</i>
Delaware, at mouth	10,000	17,000	4,000
Hudson, at mouth	13,400	22,000	2,600
James, at mouth	9,700	15,500	1,900
Potomac, at mouth	14,500	23,000	2,900
Susquehanna, at mouth	26,500	45,000	5,000

Mr. McFARLAND. Mr. Secretary, is it exactly fair that the Engineering Department of the Government should take up the matter of challenging these facts, without reference to me at all?

Secretary TAFT. It seems to, when you send circulars, and an immense number of appeals to me, and to my discretion, based on these

circulars, that the first thing I have to do is to look into the authenticity and reliability of the circulars.

Mr. McFARLAND. All right.

Secretary TAFT. And therefore what I did was to refer these to Colonel Ernst, and the Chief of Engineers, for verification of these statements, which seem to me—with quite an insufficient knowledge, it is true, of the matter—to go beyond what the facts justify.

Mr. McFARLAND. It is also fair to me to say that there were a dozen or more statements in the three circulars of which this was only one, and it can hardly be conceived that all this popular expression was brought out by that one statement.

Secretary TAFT. The statement I have referred to has been emphasized and enlarged with large type, and it was what attracted my eye at once.

Mr. McFARLAND. I wished to make it as emphatic as type and language could make it, sir.

A recess was thereupon (at 1.30 o'clock p. m.) taken until 2.30 o'clock p. m.

AFTER RECESS.

The hearing was resumed at the expiration of the recess.

Secretary TAFT. I understand, gentlemen, that the case for the public, the people, has been closed in the opening. They have presented certain issues that it seems to me it might be well to have answered at once. I assume that there is to be some discussion between the companies, and therefore I think that discussion ought to be postponed until we take up what, for the moment at least, seem to be the chief questions. I therefore would like to have the gentlemen on this side arrange how they wish that matter to be presented.

Mr. STETSON. I have spoken to General Greene, and General Greene and Mr. Cravath desire that I should speak. I do not know whether my friend Mr. Johnson would like to speak in answer to Mr. McFarland.

Mr. JOHNSON. I do not think it requires more than two arguments on that particular issue.

Secretary TAFT. Then you will open, will you, Mr. Stetson?

Mr. STETSON. Yes, sir.

Hon. CHARLES H. KEEP. There is a point of view here which is of great importance, and that is the point of view of the commercial communities in western New York, especially those immediately along the Niagara frontier.

Secretary TAFT. But it is upon the main issue?

Mr. KEEP. It is upon the main issue.

Secretary TAFT. It does not relate to the distribution of power between the three companies?

Mr. KEEP. No.

Secretary TAFT. Then, as between you and Mr. Stetson, would you rather speak now, Mr. Keep?

Mr. KEEP. I have only the duty to perform of saying that the business communities of western New York are represented here by a delegation, and to ask you to hear one representative, representing them all.

Secretary TAFT. I would be glad to hear them. I will hear them now, or after Mr. Stetson closes.

Mr. STETSON. I prefer that they go on.

Secretary TAFT. You can go on, Mr. Keep.

STATEMENT OF HON. CHARLES H. KEEP, ASSISTANT SECRETARY OF THE
TREASURY.

Mr. KEEP. Mr. Secretary, the communities to which I have referred include, as you are aware, the eighth city in point of population in the United States, having a population of about 400,000, and the growing cities of Niagara Falls, Tonawanda, and North Tonawanda, having in all, over 500,000 people. The commercial plans and the prospects of those cities for a period of ten or fifteen years past have been connected closely with the development of electrical power at Niagara Falls, and its electrical transmission. It is for that reason that the Buffalo Chamber of Commerce, the Tonawanda Board of Trade, the North Tonawanda Board of Trade, and the Niagara Falls Board of Trade have sent gentlemen to represent them at this hearing. These gentlemen have agreed that their views shall be presented by Mr. Ely, and I therefore ask you to hear Mr. W. Caryl Ely, on behalf of the commercial organizations of the Niagara frontier. I regret to say that Mr. Ely is not here at this moment, although he understood that he was to be here at half past 2. I assume he is only a minute or two late.

Secretary TAFT. We will wait for him.

(After a brief intermission).

Mr. STETSON. Shall I go on?

Secretary TAFT. Yes.

STATEMENT OF FRANCIS LYNDE STETSON, REPRESENTING THE NIAGARA
FALLS POWER COMPANY AND CANADIAN NIAGARA COMPANY.

Mr. STETSON. Mr. Secretary, the division of the questions that have been suggested by you involves a division in the consideration of the brief which I now lay before you, and which covers both branches of the question, or both questions, as suggested by you. I will go through with the entire brief, or will suspend after referring to the general question, as you may suggest.

Secretary TAFT. Mr. McFarland has asked, and I think it is fair, that the main issue which has been here discussed as to the construction of the law and what I ought to do as against all the companies, should be first thrashed out, and that they be allowed then to withdraw if they desire. That is what I understand.

Mr. MCFARLAND. Yes, sir.

Mr. CRAVATH. May I inquire if this is the same brief you filed several days ago?

Mr. STETSON. No, this is entirely new.

Mr. CRAVATH. Then I take it that on questions as between the companies we will be permitted to submit further briefs if we desire. You will remember that we all filed briefs about three weeks ago, and they were distributed, and we assumed that that closed the briefs.

Secretary TAFT. I am not going to be strict about that. Any light I can get I shall be glad to have.

(At this point Mr. Ely entered.)

Mr. STETSON. As Mr. Ely has arrived, I will suspend.

Secretary TAFT. We will hear you now, Mr. Ely.

STATEMENT OF W. CARYL ELY, REPRESENTING THE CHAMBER OF COMMERCE
OF BUFFALO, N. Y.

Mr. ELY. Mr. Secretary, there was a meeting of representatives of the Niagara Falls Board of Trade, the Tonawanda Board of Trade, the North Tonawanda Board of Trade, and the Chamber of Commerce of Buffalo, held at Buffalo, N. Y., November 19, and those gentlemen requested me to appear at this meeting for the purpose of presenting a memorial from the Buffalo Chamber of Commerce, and of stating very briefly and generally the situation as it is presented to the main body of the representatives of the business interests of the Niagara frontier. Of course, there are probably members of any of those bodies who may differ with the general consensus of opinion. Be that as it may, it seems to be the opinion of those commercial organizations as such, that they should be represented at this hearing, and should be heard in favor of the granting of the permits for the transmission of power as recommended in the report of Captain Kutz, and the recommendations of those other bodies or commissions which, on the part of the Government, in some way have had the matter under consideration.

At the outset, it seems to us that the people who live in western New York, near the Falls of Niagara, and practically adjacent thereto, and along the Niagara River, have a lively interest not only in the proper utilization of the energy of the Falls, but also in the preservation of the Falls unimpaired as a great natural wonder, attracting to that locality hundreds of thousands of people every year, and who contribute materially to the welfare of all those communities. The first development on the American side by the Niagara Falls Power Company and the Niagara Falls Hydraulic Power and Manufacturing Company, which was prior even to the Niagara Falls Power Company, gave a stimulus, an undoubted stimulus, to the growth of that section of the State. At the time of the granting of the rights by the State of New York to the Niagara Falls Power Company there was rather a stagnant condition of business and growth in that locality. Since the time of the granting and the exercise of the rights by those two companies on the American side, and the granting of the rights and their exercise on the Canadian side, among which have always been esteemed and estimated this right of transmission to the American side of a portion of the power generated in Canada, there has been a very great growth.

On the American side, right at the Falls, the two country villages of Niagara Falls and Suspension Bridge, with small interests, have come to be a thriving and prosperous city, and thousands of people have moved from their former habitations to that locality by reason of the prosperity enjoyed consequent upon the development of the power of the Falls. Buffalo has increased tremendously in the last five years. It is pointed out in this memorial of the Buffalo Chamber

of Commerce that the increase in industrial establishments, as indicated by the recent Government census, is in 1905 over 1900 in capital invested more than 44 per cent, in the number of wage-earners more than 27 per cent, and in the value of manufactured products about 40 per cent.

I do not think that any of the opponents of our desires in this matter would for a moment deny that Niagara power had more than any other thing contributed to produce that great increase.

Now, we live there; our businesses are there; our fortunes are invested there, and all of the people ought to have some fair and honorable views concerning the situation. I have had to do, in a small way with the formation of the Niagara Falls Power Company, playing some part therein, and in the formation of the International Railway Company. It was my good fortune, also, by reason of being a member of the legislature of the State of New York in 1883, when the preliminary bill providing for the appraisal of lands at Niagara for a State park was passed, and again, in 1885, when the appropriation was made for taking over the lands, to play some part in those matters. Indeed I might say, if I were not transgressing upon your time, that there was a sentiment so strong and powerful in me that notwithstanding the fact that I represented a district in the interior of the State purely agricultural, not having any manufacturing within its boundaries, I was moved to take my political life in my hands and vote for the legislation to make the Falls free. But I never subscribed to doctrines that were confiscatory or semiconfiscatory.

If I were to differentiate between the positions taken by some of my friends and some of the people here this morning in apposition, it would seem to me that in almost all of the appeals that have been made to you, Mr. Secretary, to deny these permits, there has been present a confiscatory or semiconfiscatory sentiment.

It is a condition and not a theory that confronts you, sir. You are here to do something. I do not come here to argue questions of law nor to undertake to occupy legal positions. Eminent counsel here will take care of our interests in those regards, but I speak from the standpoint of a layman. If it is not the purpose to grant permits for the development of power, then, to use the words of the immortal Flannigan from Texas, "what are we here for?"

If the Congress of the United States had intended that no permits should be granted it would have confined its enactment to the first few sentences in the bill, and would have said simply that the Government of the United States hereby prohibits the taking of water from the Niagara River for the development of power, and then it would have been up to those interested to ascertain whether it was a constitutional exercise of power on the part of the Congress. Instead of that the Congress has provided that you may in your discretion issue permits, and I was struck—not attempting to say anything that may be complimentary at all—by the language that was employed by yourself, sir, when you said:

The integrity and the volume of the Niagara River shall not be seriously impaired, on the one hand, and the capital which has been really invested and involved in the structures now entered upon, and the plant now contracted for, and the contracts now made, may not be so injured in its profit producing as that this act may operate as a practical confiscation of property.

And that brings along with it the remembrance of the remark you made this morning, sir, that "justice should be done." It seems to me clearer that the object of this legislation was that justice should be done to everyone, to all the people of the United States who desire the preservation of this great cataract, this great natural wonder, and to such of its citizens as are dependent upon it in the way of and by reason of great investments that have been made, founded upon faith in the statutes and contracts under which those relations were entered into.

I am not here to argue any of these questions in favor of the power companies. I am here against my will, because I was asked to come by these commercial bodies, and only as late as two or three days ago. It seems to me, sir, that those gentlemen who appeal the granting of these permits are mistaken in what they urge to be the proper way to get a treaty from these foreign governments with whom we must deal, because the Canadians have their finger in this matter as well as Great Britain, and if I mistake not, are becoming more and more jealous or the Canadian government is becoming more and more jealous of its prerogatives.

To deny at this time the granting of any permits, thereby denying to the citizens of this country rights which they have endeavored to obtain by contract with the Canadian government, or the Province of Ontario, rights which such governments have in the most sacred manner endeavored to bestow, might produce an impression that discourtesy and haste had been exercised by this Government, and that no treaty at all, possibly, should be made; that we, having acted hastily in denying recognition of rights which the Canadian government has undoubtedly endeavored to confer, had cut ourselves off from an approach through the regular channels of diplomacy.

It seems to me that the rights that have been created on the Canadian side are and ought to be regarded as being in law and in fact very greatly different from those that have been created on the American side. The development of power on the American side of the river has been by corporations of the State of New York, created for that purpose, but enjoying those rights and exercising them, not upon the lands of the State, but the private uplands, of which they own the legal title, adjacent to the bed of the Niagara River, the property or the fee of which to the center thread of the stream it has been held is vested in the people of the State of New York. As I understand it nobody owns the water that runs over it, not even the Government of the United States.

On the Canadian side development has taken place by direct contractual relations between the companies which are making the improvements and the Canadian government. The structures and works are built upon lands belonging to the Province of Ontario, the dominion of the Queen Victoria Niagara Falls Park itself. I have been to some extent familiar with the progress of that development, as a close observer for a period of more than fifteen years, and I do not think there has ever been more care and deliberation used under similar circumstances than has been used by the Canadian government and by the Province of Ontario. All the plans of all the structures and all the works have been worked out under contracts which have been formulated by the commissioners of the Queen Victoria Niagara Falls Park, under the direct sanction and with the

direct participation of committees of Parliament and cabinet ministers, and the greatest care and deliberation has characterized the matter from its inception.

After the Canadian government—its Province of Ontario—shall have created these rights, reserving a rental from every horsepower which has been developed, which rental goes toward the payment of the expenses of the government, does it stand to reason that because an outcry is raised that the scenery of Niagara Falls is about to be impaired, the Canadian government will stop that development? Is it not within our observation everywhere that where vast amounts of capital are invested in that way they are taken care of, and are permitted to work out their legitimate functions, especially where those matters have all been matters of governmental creation?

Again, if 160,000 horsepower is to be generated from the waters of the Niagara River by Canadian diversion, it seems to me that the question comes with great force: Why shall we not employ that, if we may, for the upbuilding of the State of New York, and the people of this country and their material welfare and convenience, rather than to let it go for similar purposes to the upbuilding of Canada? There is an element of selfishness which may pervade any such argument as that, but business is business, and this is largely a question of business. It seems to me it may be considered as such, especially if it is correct, as set forth by the reports of engineers and the opinions of men of great ability and experience and observation in this particular matter, that water sufficient to create the desired amounts of power may be taken from the river without impairing the grandeur of the cataract.

I was much struck, sir, by the questions which you addressed this morning to some of the gentlemen, as to whether or not they were in favor of construing the language of the act to mean that practically not one drop of water should be taken away from the Falls.

Secretary TART. To go back a little in your argument, you say it is better that we should have the 160,000 horsepower than that it should be used in Canada.

Mr. ELY. Yes.

Secretary TART. That does not quite state the situation, does it? In other words, if we do not take it it will not be used at all?

Mr. ELY. I can not subscribe to that, from my experience as a business man. The energy and the financial responsibility and substantiality that has brought about those structures will bring about the utilization of power to be generated therein.

Secretary TART. No; but the idea of Congress was doubtless this, that as they restricted the electricity brought across the river they would restrict the use to which Canada would be likely to put the water of the river, at any rate, because if there was no demand on this side of the river there would not be demand enough to take much water out of the stream on the other side. Is not that the theory?

Mr. ELY. I should say that was the theory, but I have had considerable difficulty in determining just what the different theories were. As stated by Judge Potter and Mr. Stevens, they were very clear, but concerning many of the other statements I have been forcibly reminded of a sentiment expressed by Josh Billings, and to which I always subscribed: "That it is better not to know much than to know so much that aint so." It is difficult to bring out of the attempt to manufacture sentiment in this case anything except a

radical and reckless attempt to befog the situation, and to surround the Secretary of War with a set of annoying circumstances—to prevent him, rather than to assist him, in the discharge of his duty in the premises.

In regard to the utilization of all the power that the Canadian companies have the right to generate—and that is what I understand you to direct my attention to—the uses of electricity have within the past few years become so extended that it seems reasonable, does it not, to suppose that within a reasonable time it would be possible to utilize in Canada all the power that the Canadian companies might generate? It is only within the last two or three years that the New York Central Railroad has contemplated and set about the electrification of a 30-mile zone in and about New York City, and already the Pennsylvania, the New York, New Haven and Hartford, the Long Island, and the Erie and other trunk lines of railroad are doing the same thing in one place and another.

Based upon the experience of the past few years, I should say it is only a question of a few short years when all of the power produced in Canada might be utilized in Canada. Where vast sums of money like these are invested they make uses. The interests that have located there, these great works, will locate others in which to utilize the power. Canada is very active. Why, Canada is pulsating with the very energies that have built up this great nation of ours. The Canadians, it has been said, are slow. I should say that it might properly be said they have been slow, but Canada is not slow to-day. Her attempts to confine manufacturing within her boundaries are leading, almost every day, to the location of factories by Americans within the borders of Canada, in which to make the things to be sold to the Canadians; because to-day we are shut out of Canada by very high protective duties, such as we ourselves have put up against other nations. They have now been put up by the Canadians against us. Several great works are being located in the neighborhood of Niagara Falls.

Secretary TAFT. If I were confident that all this power could be taken on the Canadian side I should not feel quite so anxious with reference to the question of the confiscation of the property by denying the right to bring electricity over.

Mr. ELY. I am quite well aware that my statement has its bearing in both directions, just as Mr. Stevens' statement had its bearing in both directions. He said, "We do not want the power brought across, because it will run railroads; it will cause the building of railroads, and of factories, and the employment of people." The converse of that proposition is also true; we want it for that very reason; and that is why the chambers of commerce of Buffalo and those other cities are represented here—because they do want the power to come over for their own upbuilding.

With regard to the amount of diversion that will work an impairment of the scenery, you have the reports of your engineers—the evidences of your own senses.

Niagara appeals to the human mind through the channels or avenues of the eye and the ear, the sight of all its grandeur spread out, accompanied by the thunder and noise that have attracted the attention of everyone since the Indians were first amazed by it. Those are the things that produce the impression upon the human

mind. If a large quantity of water may be diverted from the river and utilized for the benefit of mankind, and at the same time enough be left not to impair the grandeur of that spectacle and its force upon the human soul and mind, are we not serving two laudable purposes at one time and the same time?

It has been said, Mr. Secretary, by many men, many great men who have no interest whatever in the development of power at Niagara Falls, that the idea of the development of a mighty power from that cataract and putting it to the uses of mankind has been as powerful to impress their souls and minds as the natural power of the cataract itself. Are we not always greatly moved by the performance of a great work by man? Is not the spectacle of Niagara to-day greatly more edifying, and is it not producing a greater effect upon human beings who see it than it was when it all ran wild to the sea?

I know some will find fault with the looks of some of the structures, and some will point out this and that and the other things, but upon the whole, is not the work that man is doing at and about Niagara Falls creating an accompaniment to its natural grandeur that increases the effect that will be produced and must be produced from now on upon the people who go there to look upon it?

With regard to the effect to be produced upon the Horseshoe Falls by the diversion of about 13,000 cubic feet of water on the Canadian side, between the Falls and the crest of the natural rock dam which separates the rapids above the Falls from the upper river, I have this suggestion to make: From the report of Captain Kutz it appears that there is now being diverted and utilized on the American side of the river about 13,000 cubic feet per second, and I have yet to find those who are familiar with this stream from constant observation and being almost daily brought into contact with it who say they can perceive any diminution or that there has been any visible impairment of the volume of water passing over the American Falls. If the like amount is diverted on the Canadian side, where the flow is many times greater, does it not stand to reason that it would be imperceptible, and if imperceptible then how is the grandeur of the cataract impaired, and in what way is it detracted from? The comparative statements that have been made concerning Niagara and the volume of water that has been and is to be abstracted therefrom are very misleading in their character, as you have already pointed out.

Why, I have seen publications in the newspapers within the last year and a half that would lead one to believe that Niagara was already running pretty nearly if not quite dry. Pictures of Niagara, desecrated by these corporations that have committed the assaults that some of our friends talk about, that showed the bare rocks in the river running dry. As a matter of fact the water has been higher in the river for two or three years, or a couple of years, than it has been for a long time before; and, as a matter of fact, the blowing of the east wind or the blowing of the west wind upon the breast of the waters of Lake Erie makes high or low water in the Niagara River, and has done so ever since I have known it and been conversant with it, twenty years and more, during about thirteen years of which I, as a lover of the cataract and the stream, used to see it many times every week.

It has been stated by the State geologist that there have been ice dams in certain places above the rapids within the last two years,

but it is equally true that there were ice dams there before, and many of them, some of them being so curious in their nature as to have been made the subject of public record by persons interested in the spectacle.

We believe it is possible to grant these permits as recommended by Captain Kutz, and not injure or impair the scenery of the Falls, and we feel that justice will be done by that disposition of the matter before you.

The United States Government certainly is not called upon to exercise some great, mighty, mysterious, and inchoate power to do something to this stream. That is not called for. The United States Government is not going to deprive any of its citizens of their property without making due compensation therefor, and why should we not proceed in disposing of these matters along intelligent lines, and when, if ever, Niagara shall be impaired in her beauty or grandeur, then let compensation be made, fair and just compensation, and all the water of the Falls resumed by the Government if such shall be the desire.

It never was intended by this legislation that contract rights that have been created and which are beneficial to hundreds of thousands of the citizens of the State of New York and of the United States should be interfered with arbitrarily, nor that rights upon which millions of dollars have been expended and upon the faith and reliance in which thousands of people have changed their habitations and removed to places about the Falls should be rudely stricken down. On the contrary, as it has seemed to me was justly interpreted by the Secretary, those rights and investments of capital should be preserved in so far as was not inconsistent with preserving the integrity of the Falls themselves.

I do not feel very well satisfied with what I have said. I have had very little time for preparation.

In conclusion, I must say that it seems to me that the field of sentiment has been unfairly invaded; that some one has run amuck among the good-feeling æsthetic people of the United States, and as usual under such circumstances produced harm rather than benefit. Sentiment governs the most sacred relations of our lives. Almost all marriages in this country are matters purely of sentiment, and the family is the very foundation of our institutions. Sentiment governs us in our best actions, but that is proper sentiment founded upon fact and correct conception. Sentiment that has been produced by misstatements and garbled facts, for the purpose of bringing pressure to bear upon public officers in the discharge of their duties, is unworthy of attention, and it dishonors those who, yielding to it, join in an unworthy undertaking, and disgraces those who are guilty of working it up. I can not refrain, sir, from making this allusion to the methods of some of those who have sought in an improper way to create an atmosphere here that would render it difficult for you to dispose of this matter in any other than the way consistent with their desires.

I will be glad to file this short memorial from the Chamber of Commerce and thank you very much for your courtesy.

The memorial referred to and certification accompanying same were as follows:

Before the Secretary of War.

In the matter of the application for permits under the act entitled, "An act for the control and regulation of the waters of the Niagara River, for the preservation of Niagara Falls, and for other purposes," approved June 29, 1906.

To the Hon. WILLIAM H. TAFT, *Secretary of War*:

The Chamber of Commerce of Buffalo, the leading commercial and civic organization of the city of Buffalo, respectfully submits this memorial, not in the interest of any power company or transmitting company seeking permits for the diversion of water or for the transmission of electricity, but for the express purpose of presenting to you the views of the citizens of Buffalo upon the questions involved, growing out of the act of Congress approved June 29, 1906, known as the Burton bill, and described in its title as "An act for the control and regulation of the waters of the Niagara River, for the preservation of Niagara Falls, and for other purposes."

The city of Buffalo has attained a prominent position among the commercial cities of this nation, as well as of the world, its water-borne commerce for the season of navigation of about seven months aggregating approximately, lake and canal, 14,000,000 net registered tons; the fourteen trunk lines entering the city reaching more than one-half of the population of the United States and two-thirds of Canada, within a day's ride, with their enormous through and local freight tonnage, make Buffalo one of the chief railroad cities of the continent. The most promising development, however, of Buffalo in recent years has been the rapid extension of industrial establishments, as indicated by the Government census, which shows the following percentages of increase in 1905 over 1900, namely, capital invested, 44.6 per cent; number of wage-earners, 27.1 per cent; value of products, 39.5 per cent.

This industrial development is believed to be due to the unexcelled transportation facilities by lake and rail, the low cost of sites for industrial establishments, and above all, the electrical development at Niagara Falls, giving to these establishments power at a less cost than can be generated by steam. Your action, therefore, upon the applications for the diversion of waters for the generation of electricity at Niagara Falls and the transmission of electricity from Canada into the United States is momentous to Buffalo and the frontier, and essential to our further growth and development.

The Burton bill was enacted into law primarily for the preservation of the scenic beauty and grandeur of Niagara Falls, and with others, we believe the enforcement of its provisions would accomplish this end. The president of the so-called American Civic Association, however, continues his attack, with the aid of a publishers' association, and through the distribution of thousands of circulars, seeks to manufacture sentiment that there is danger to the Falls. We should like to feel assured that his efforts are actuated by the motive to preserve the integrity of the Falls for all the people and not to destroy the natural advantages and resources which Buffalo and the frontier enjoys as against rival localities for industrial enterprises. Our attention, however, in this regard is naturally arrested by his own statement.

"The result of permission to develop and introduce the vast amount of power in the present enterprises, even if successful, would be to produce about Niagara Falls a most unwise industrial congestion."

This is the keynote of all the agitation that Niagara Falls must be saved.

We respectfully commend the honorable Secretary of War for the view expressed of the task imposed upon him under the law, that—

"The integrity and volume of the Niagara River shall not be seriously impaired, on the one hand, and the capital which has been really invested and involved in the structures now entered upon, and the plant now contracted for, and the contracts now made, may not be so injured in its profit producing as that this act may operate as a practical confiscation of property."

We protest against the demand for the American Civic Association that the people of this nation be called to—

"Tell him you believe the United States is rich enough to buy back, if necessary, and to own Niagara Falls undamaged regardless of any selfish corporate interests," for we have grave doubts whether or not there could be manufac-

tured sentiment throughout this land that the United States expend upwards of \$50,000,000 "to own Niagara Falls undamaged."

The Chamber of Commerce therefore in conclusion respectfully submits:

First, that the State of New York and Province of Ontario and the United States have provided sufficient legislation for the preservation of the scenic beauty and grandeur of Niagara Falls.

Second, that the amount of water authorized under the law to be diverted for the generation of electricity and the amount authorized to be transmitted from Canada to the United States generated from the waters of the Niagara River will not impair the grandeur and scenic beauty of Niagara Falls.

Third, that the manufactured sentiment presented to our public officials, charged with the performance of a specific duty, should not be given consideration in the determination of the questions involved, and to which such communications relate.

Fourth, that Buffalo and the Niagara frontier should not be deprived of the benefits flowing from the development of their natural advantages and resources, where such development imposes no injustice or works no injury to the public or rights of the public in a public stream or public spectacle.

The Chamber of Commerce therefore respectfully requests that permits be issued for the diversion of the waters of Niagara River and for the transmission of electricity into the United States from Canada generated from the waters of Niagara River, as authorized by the act of Congress approved June 29, 1906.

Dated: Buffalo, N. Y., November 20, 1906.

CHAMBER OF COMMERCE OF BUFFALO,
By Dr. WILLIAM H. GRATWICK, *President*.

F. HOWARD MASON, *Secretary*.

Before the Secretary of War.

In the matter of the application for permits under the act entitled "An Act for the control and regulation of the waters of the Niagara River, for the preservation of Niagara Falls, and for other purposes," approved June 29, 1906.

I, F. Howard Mason, secretary of the Chamber of Commerce of Buffalo and secretary duly chosen at a meeting of representatives from the Niagara Falls Board of Trade, North Tonawanda Board of Trade, and the Chamber of Commerce of Buffalo, held at Buffalo, N. Y., November 19, 1906, do hereby certify that the following is a true and correct copy of a resolution duly adopted at said meeting:

Resolved, That the chairman (Mr. William H. Gratwick) be, and he is hereby, requested and authorized to invite Mr. W. Cary Ely, of Buffalo, to present the views of the commercial organizations here represented at the hearings before the honorable Secretary of War, November 26, 1906, upon the applications for permits under the act of Congress, entitled "An Act for the control and regulation of the waters of the Niagara River, for the preservation of Niagara Falls, and for other purposes," approved June 29, 1906, and to urge the granting of such permits for the transmission of electricity into the United States from Canada, and for the diversion of the waters of Niagara River for power purposes, as in the judgment of the honorable Secretary of War will make effective the provisions of the act of Congress aforesaid and promote the industrial and commercial development of the Niagara frontier.

In witness whereof, I have hereunto set my hand at the city of Buffalo, N. Y., this 24th day of November, 1906.

F. HOWARD MASON.

Secretary TAFT. Mr. Stetson, you may now proceed.

STATEMENT (CONTINUED) OF FRANCIS LYNDE STETSON.

Mr. STETSON. Mr. Secretary, this question which is now before you, as I apprehend it, concerning the distribution of the amounts of power to be taken severally by the different companies upon the report of your engineer as to the aggregate amount of power to be

taken by companies from the Canadian side and transmitted to the United States, is different from the question of how much power can be taken in the aggregate from the Niagara River on both sides. That is the question that I supposed was discussed, and fully discussed, before you last July at Niagara, when you had the great advantage of taking the evidence of your own senses as to what was occurring to the river as a whole.

But unless I misapprehend the scope and effect of the arguments this morning, and the scope and effects of the arguments and appeals that Mr. McFarland has addressed to the public, that question as to the effect upon the Niagara River as a whole, which we supposed was argued and settled, so far as argument was concerned, last July, now has been brought up again, and thus we are compelled to turn our attention again to that question, as to which I stated at the close of the argument last July, we readily acquiesced in the statement and the wisdom of the statement of the Secretary of War, that those matters should be referred by him to his master—that is, to the American members of the International Waterways Commission and to the Board of Engineers of the Army—for report; and we have not come here with any idea of contesting that report upon the main subject. But we are forced to take your time for a few minutes concerning that branch of the question, because of the voluminous, and, I might say, in some respects venomous, attacks that have been made upon our positions.

Out of the volumes of speech that were uttered this morning one stood out conspicuous from its knowledge of the facts, and I shall esteem it always a privilege to have heard Professor Clarke in his address. Such a speech as that, to whatever conclusion it leads, is a speech that fair-minded men should welcome, and concerning which fair discussion can be had; and with the highest respect to the emotions of some of the other gentlemen, I must respectfully say that it is the only speech that I have heard since I have been here that requires consideration.

Last July I took considerable time, as before this entire debate is closed I shall ask to take some time again, in asking your honor to discriminate between those who are using Niagara power. The power that one man takes from the Niagara River, an amount of power which is absolutely inappreciable in its effects upon the river, does not justly condemn that man or his investment to denunciation or destruction because of that which may be done by others who come after. I have insisted upon that before, and I shall insist upon it again with all the force that I can command. I wish gratefully to acknowledge the contribution to that feature of Professor Clarke, whom I never saw before and of whom I never heard before, except for his high official position, and whose statement in that particular in recognition of the Niagara Falls Power Company was as entirely impartial as I believe it was effective.

Professor Clarke uttered his sentiments with reference to nature, with reference to natural objects, with reference to this particular natural object, in some respects the greatest of all natural objects in the world, and certainly the greatest natural object in northeastern America, and he expressed his interest in it and his love for it. He expressed his desire to perpetuate and to protect it, even, if left to

himself, to the extent of going to the very point of prohibiting the use of any water of the Niagara River for industrial purposes; and he seemed to suggest what General Ernst intelligently and acutely observed in the report a year ago—that the characteristic quality of Niagara which impresses the human mind is not in its surrounding scenery, not in the general height of the Falls, but rather in its volume. When Mr. James C. Carter made his great address at the time of the opening of our reservation—for New Yorkers are not all indifferent to the value of the Falls; no other people have submitted to taxation for the preservation of that beauty as they have; we have spent millions in doing it—at the opening of the park resulting from those expenditures Mr. Carter made the address in which he attempted to define what it was that gratified the human mind in the contemplation of this sublime cataract and, finally, he came to the point that it is “the sense of power.” That is the quality of the cataract that affects the human mind. It is not beauty alone; it is not height alone; but it is volume and velocity plus the drop. I do not believe that before these latter days any man ever went there, whether or not he had mechanical ideas, without saying: “What could that do for the use of mankind?”

I will go further. Professor Clarke justly professes his love for Niagara Falls. Mr. McFarland has written much on the subject, but in what he has written he has seemed to me to express not sentiment, but sentimentality. I have not discovered a thought underlying anything he has written that stirs the heart with the impulse of recognition of beauty or of power as do the words of Mr. Carter, or the acute definition of General Ernst.

I will go further. These gentlemen speak of Niagara and its beauty. I defy anyone in this room or elsewhere to compare with me in my love for the beauty of Niagara. I have studied it for more than twenty years from every point. I know it; I love it. I have listened to its sound. You think you have. You have never heard it. Professor Lupton, of Leeds, England, said to me one day: “Has Niagara a sound?” I said: “Yes, of course, a mighty sound.” He said: “When I went away and looked at my notebook, I could not find that I had entered that it had a sound.” He said: “I will listen for it.” I went there again and listened and then inquired for an answer. He said: “Yes; it has a sound so deep and low that it has been questioned what would be the length of the organ pipe which would produce it.”

It is not the thunder that you hear. It is not the thunder of the cataract that Mr. McFarland has pointed out to you. It is a deep diapason, that goes down way under the bubble and rush of the waters, which is the profound note of Niagara. Such is the sound that will control the disposition of the present question as against the bubble and froth and foam, not those of the great American people who understand the question, but of those who are engaged in the kind of agitation that amounts to little more than the blowing of soap bubbles. Do they love Niagara? I love it far more than they. I have followed its sound, and I have followed its beauty. I have put my life into it. When Professor Clarke says that he would be glad to see removed all buildings near the Falls, I appreciate his sentiment and I go even further than he. I would be willing to give a tenth of

all I have in the world, and more, to restore all along Niagara River from Buffalo to Lewiston the glorious forests that once stood there, as now they stand on Goat Island; on either side of the stream, to restore it in every aspect, in every surrounding, in scenery, in all that will constitute the elements that gratify the lover of landscapes and the glory of nature, following, as I have many times, the course of the river from Chippewa Creek to Lewiston, where you get the counterpart of Cole's Voyage of Life; starting in the placid waters of the upper Niagara, with childhood's innocence of danger, then rushing through the turbulent rapids and plunging over the cataract of youth and early manhood; coursing through the lower rapids in the vigor of full maturity; and at last coming out into life's placid finish as you enter the fond and shining embrace of Lake Ontario.

I defy any man to love Niagara River and Falls more than I. The love of those who have spoken in the words of the poet, as compared to mine, "Is as moonlight to the sunshine, and as water is to wine." I repudiate and scorn the idea that any advertising agency or propaganda, however powerful, has a monopoly of the love, or of the proclamation of love of Niagara and Niagara Falls.

I maintain, then, that I am entitled to speak as one who knows and loves, and would respect and perpetuate Niagara Falls in all its glory and in all its sublimity. Is that a mere statement? Is that contested by my acts? Am not I one of these people who would turn that power to commercial use? Am not I one of these people who are resisting the efforts of others who, under the sham application of the commerce clause of the United States, are endeavoring to turn the Federal Government into an agency to destroy commercial development? Yes, I am; I am one of those. I think that, within reasonable bounds, it is better for mankind that to this extent the waters of Niagara River should be so employed, inasmuch as we can not now restore the primeval conditions which I would prefer.

I go beyond Professor Clarke and I say that if it were possible now to sweep away the villages on both banks, to sweep away everything from Lewiston to Buffalo and to reestablish the primeval forests, it would be a sacrilege to permit rural industry to enter such a shrine of beauty and sublime power. But the era has passed in which that restoration is possible. We are dealing with the era of 1878, when, under the influence of Lord Dufferin, Governor-General of Canada, and Lucius Robinson, governor of the State of New York, an agreement was reached that upon each side of the river there should be a park reservation created and maintained severally by the two governments. That movement proceeded to fulfillment, so that in 1886, through the results of taxation, there had been developed and established on the American side that park which now is a reservation maintained at their own expense by the people of the State of New York. On the other side is a park which, as I understand it, was expressly declared should not be made a charge upon the people of the Province of Ontario. So the commissioners of the Queen Victoria Niagara Falls Park, for the creation, preservation, and maintenance of that park, have been obliged to seek revenues from the park itself. Therefore, as suggested by Mr. Ely, on the two sides of the river you are dealing with two different questions. On the Canadian side you are dealing almost entirely with the Canadian or provincial government.

I would add that the commission that then sat on the two sides of the river undertook, in the exercise of their discretion, to determine how much property it was desirable should be taken for the preservation of the Falls. Upon the American side, the State of New York had sold the American Falls and Goat Island under a soldier's grant of 1812, which came into the possession of your predecessor in that chair, Gen. Peter B. Porter. The American Falls, having been sold to General Porter and continuing in his family ever since, had to be bought back by the State of New York at a price of over \$600,000, including Goat Island. There had been no such alienation by the Province of Ontario, so far as I understand, though there is a gentleman here who can answer as to that much better than I can.

At all events, on either side of the river the commission exercised its jurisdiction and judgment as to how much of the territory surrounding Niagara Falls was necessary for the preservation of that object. They made their decision, they made their purchases, and they established their two reservations.

The several governments then passed acts permitting the establishment of power companies. On the American side the act was drafted by my eloquent and esteemed friend, Mr. Ely, and thereby he and his associates, all residents of Niagara Falls and largely riparian owners, were constituted a corporation at Niagara, with power to take the waters of Niagara for purposes specified in the New York statute of 1886. That is the origin of the Niagara Falls Power Company, of which I am now speaking, and of which I am a representative, and which has been known as the pioneer in the electrical works on that particular point. I will presently have something further to say.

Under those conditions that company got no property from the State of New York. That company or its originators owned the water front of the Niagara River for 2 miles next above the highest point which the commissioners deemed it desirable to carry the reservation for the protection of the Falls. Certainly there was no thought of encroaching upon Niagara. That was when the question was fresh. It was the agreement of the State; it was the understanding of the people, and several times it has since been decided that that right of the riparian owner was such as to entitle the corporations thus constituted to draw the water for the purposes of these manufactures, notwithstanding it was a boundary stream, and notwithstanding it was a navigable stream; and here I may refer to the decision of Judge Childs, in the case of *Smith v. Hydraulic Company*, which Mr. Romer knows so well, and which was affirmed by our court of appeals. (175 N. Y., 469.)

That was the position upon our side of the water—a corporation formed by these gentlemen living at Niagara in advance of the cooperation or participation of any of those (excepting Mr. W. B. Rankine) now or for many years interested in the Niagara Falls Power Company.

On the other side of the river a similar act was passed; and Mr. Woodruff's statement this morning that all these Canadian companies had been established because their promoters were unable to obtain the power on the side of the United States was made in violent error as to the facts, certainly so far as concerns the Canadian Niagara Company. The Canadian concessions began as early as the American; and they began for the reason I have pointed out, that the

Canadian commissioners were desirous of obtaining from the use of the park itself, Queen Victoria Niagara Falls Park, the means with which to sustain the park. And thereupon a number of Canadian gentlemen and Englishmen joined, under the Canadian act, in forming the association which possessed the Canadian right in the park. That had been done entirely anterior to the incursion of the so-called vandals, Mr. D. O. Mills, Mr. J. Pierpont Morgan, Mr. Morris K. Jesup, myself, and others, who now are supposed to be lacking interest in beauty and art.

Before our incursion all this which I have described had been accomplished by law, and these properties were on the market. Somebody was going to develop them; and in 1887 or 1888 began the discussions which resulted, in 1890, in the present group of capitalists acquiring the Niagara Falls Power Company. They never asked anything of the New York park commissioners. They had no occasion to. They were not dealing with the property under control of the park commissioners. They were dealing with the property entirely above the park. This proceeding on the American side ran on for two years, when I was approached personally by Col. Albert D. Shaw, formerly a Member of Congress, formerly consul at Manchester, and formerly consul at Toronto, where he became interested in Canada. He said: "We are going to build on the Canadian side unless you will buy our right." What did we do? We bought the charter after it had been offered to us. We did not go and seek it. Mr. Woodruff is entirely mistaken in supposing otherwise. We bought that charter and then what did we do? We let it lie dormant for nine years. If we had not thus purchased you would have had a Canadian development twice as large years ago. That shows how little eager or pressing we were for the purpose of interfering with the flow of the Niagara.

We now come to the year 1892. On our side we had sunk our shaft in October, 1890. By that date we had made engagements involving millions of money, when that gentleman—who has now gone to his rest, and for whom I have only a high respect for his many services to the public, for at one time we were close friends, Mr. Andrew H. Green, who was a watchdog if there ever was a watchdog—made the seventh annual report for the Niagara Falls Park commission, in which he made statements^a concerning our proposed work which I will submit with my remarks. That is the first report that was made about our work, and it was published by way not of condemnation but commendation. You will find it stated in the report of that commission for 1889, submitted to the legislature January 29, 1891, that there a very remarkable and original development of power was about to be made by the prominent business men at Niagara Falls. We understood that Mr. Green and his associates considered this to be an interesting and desirable undertaking.

We had no word or suggestion of opposition until after we had committed ourselves publicly to our undertaking, beginning work in October, 1890. The report for 1891 called attention to the diminution of the water in the Niagara River.^b You will find it in the eighth

^a The seventh annual report, pages 11, 117, was as follows: A-B, pages 11-12; C-D, pages 117-118.

^b Taken from twenty-first annual report, E on page 89 to F on page 90.

annual report for 1891, submitted to the legislature January 29, 1892. I shall submit it with my argument. It called attention to the low water in Niagara River and to the inception and progress of the works, and it left it to the public to say whether those works were or were not the cause of this low water. That shows the inconsequence of mere impressions. That low water that now we hear so much about was commented upon in the report for 1891, which was three years before our tunnel was bored through. That goes to show how even most intimate and forcible observers may be misled. The complaint of the effect upon the Niagara River was made three years before our tunnel was bored through; and from personal observation, I may say, the water then was lower than it is now, and for a series of years it had been lower.

Secretary TAFT. Was there not a company before yours taking out water?

Mr. STETSON. Pardon me. I speak of electrical——

Secretary TAFT. I understand; but with reference to the withdrawing of water, I mean.

Mr. STETSON. There was one prior to ours.

Secretary TAFT. When did that come?

Mr. STETSON. That company began to draw water, I should say, about 1857. Mr. Romer is here and can state the facts better than I can. How many horsepower do you think you were developing when we came, Mr. Romer?

Mr. ROMER. We began in 1853, not 1857, I think. At that time there was only one flour mill that was taking power, and that ground about 40 barrels of flour——

Mr. STETSON. I mean when we came, in 1889, how much do you suppose you were taking?

Mr. ROMER. Possibly 10,000 horsepower.

Secretary TAFT. I did not know but that the report referred to that.

Mr. STETSON. Oh, no; that had been going on for years, that 10,000 horsepower. Mr. McFarland said this morning that you could not take out the fifth of a glass of water without noticeable loss. But I think that you could take out a fifth of a glass out of the Atlantic Ocean and not notice it. Not even Mr. McFarland could have discovered the loss of 10,000 horsepower out of the Niagara River. That was not the question at all.

Now I have led up to what was actually done by those connected with the pioneer electrical development. Here was no assault by those gentlemen, who have been sarcastically called "Our Grand Dukes," upon the rights of the public at Niagara. On the American side, what was done was projected by citizens of Niagara Falls who owned the riparian lands. On the Canadian side the project was authorized by the government itself, in order to create and maintain the Canadian case. That is the origin of the two pioneer corporations for which I speak.

Then what did we do? We made an investigation—all of us did, earnestly—to see whether there could be a possible effect upon the Falls by reason of our taking up this first object on the American side, and we reached the conclusion, to which I refer again hereafter, that there would not. But we let the Canadian side rest in

order to demonstrate just what our American action might effect, that we might proceed with safety. We intended then, and always we intended, to preserve the integrity of the Falls in all their sublimity. Well, the laws having been passed, and we having acquired the rights under these laws which we did not originate, we undertook to have what was the best possible way of making the development, which should be consonant and consistent with the splendid features of this great natural object.

I will not detain your honor at length as to that, but will state simply that we went abroad; that we offered prizes throughout Europe amounting to \$30,000; that personally I made a trip over Europe to look at all the methods of power development; that we consulted Lord Kelvin, Prof. William Cawthorne Unwin, Col. Theodore Turettini, and Professor Mascart, of Europe, and Doctor Sellers, of this country, and we adopted their recommendations. When Professor Clarke said this morning that it was our sin that we did not use but one-third of the power we might have from the water taken by us, I would respectfully reply that it is not our sin. If the loss be such, then it is our terrible misfortune. Distinguished professional gentlemen advised us what to do, and we knew of no better or higher authority in the world. We took their advice and followed it; and if we could get back to that date most gladly would we give Professor Clarke \$500,000 for the formula that would save that other two-thirds that he thinks that we are losing.

Last summer at Niagara Falls Mr. McFarland made an assault indiscriminately upon the looks of things and I asked him if he would come to our plant. He went with me, and as he stood in our power house he could not have the face to stand up against that most beautiful installation that had ever been conceived of and say that it was such as justified his remarks. No; he said, "You know you are a lawyer, and you know when you are making an argument you can not weaken it by distinctions," and so he did not distinguish between us. He just said indiscriminately that we were all in that condition.

Now, we have advanced through five years from the beginning. On the 1st of June, 1895, our wheels began to turn and they have been turning continuously and increasingly from that time to this, until, as your honor has observed, we have brought out from the Niagara Falls Power Company's electrical plant the output, in round numbers, of 83,000 horsepower and in the hydraulic plant, converted into horsepower, we have substantially, in round numbers, 8,000 more, making 91,000 horsepower, and I believe, though I am subject to correction, that Mr. Romer's company is producing thirty or forty thousand.

MR. ROMER. Forty thousand horsepower.

MR. STETSON. There you have the result—131,000 horsepower on the American side, which is, as you found this morning, from an eighth to a ninth of the Canadian side.

That is what is in operation now. It is not a question of what is going to be. It is not a question of whether, when you look in the glass to-day, you see you are a day younger and more beautiful than you were yesterday. It is a question of what has been the effect of turmoil and tedium and resistance to assaults for about sixteen years. That is the phase that to-day is exhibited and illustrated when you look at what now is the effect of the withdrawal of 131,000 horse-

power from the American side, which is one-sixth of the Canadian side, or one-ninth of the Canadian side.

Now, Mr. Secretary, it has been my great privilege and pleasure to listen to your decisions for many years, and sometimes, I hope, to influence them. Here is a case in which I can not hope to influence your decision, but there has been a mightier advocate than I. That river which, unlike the Niagara flood, admitted by Mr. McFarland in some one of these rooms, thunders its cataract over the falls, spoke to you on the 12th day of July last. You stood in front of it and you looked at it, and if you had ever seen it before I would defy even your acumen to detect a difference in its flow from the time when you first saw it, before there were any mills there at all. I have watched it for twenty years. Our judgment may be biased. That is all right. Charge us with bias; we may be wrong about that. But we insist that our judgment is as good as that of the gentleman to whom Mr. McFarland has referred when he says "Recent visitors at Niagara Falls report that." Well, we are not "recent visitors at Niagara Falls who report that." We are people who have lived at Niagara Falls. We are the people who have done more in a day to attract attention to Niagara Falls than even the output from Harrisburg.

The world has been interested in Niagara Falls as it never was before. The falls, as General Ernst says, are not conspicuous for their height. The falls at Labrador are higher; the Zambese Falls in South Africa, the falls in Norway, and in other places are higher. Why is it that the people are interested in Niagara Falls? It is because, to use a classic expression, they are "in our midst;" it is because we have invested, and for those who are to come after us we have invested them with human interest, and that I say, with great respect, is quite equal to beauty and to scenic interest. When you have got away from the contrary delusion you realize that what we and others have done has been an addition—a vast addition—to human interest; and I defy you or any man who can speak the language of truth, and keep within the bounds of truth, to say he can detect a difference visually.

I do not quite understand the report of General Ernst when he says "appreciably affect the Falls." Neither last summer, now, or at any time could I willingly be drawn into any statement which seemed to conflict with General Ernst; but I can not believe that when he says "appreciable" he means appreciated by the eye. When we are talking about scenic grandeur and beauty we refer to the eye only, and referring to that organ I defy anyone truthfully to say that he can detect the difference between the American Falls as they are to-day with 131,000 horsepower subtracted and what they were thirty years ago when less than 10,000 horsepower was being subtracted.

That, then, leads me to the conclusion, and I hope you may be led to the conclusion from an observation of the conditions, that it is practically demonstrated that 131,000 horsepower produces no appreciable diminution, and, inferentially, that 350,000 horsepower taken from the Canadian side, which is six to ten times the capacity of the American side, and which, as stated by Professor Clarke this morning, would not affect the American side—I say the inference which you are permitted to draw, and which I believe you will draw, is that the withdrawal of 350,000 horsepower would not affect the

Canadian Falls more than the 131,000 horsepower has affected the American Falls.

Professor Clarke made an interesting observation, and I could not quite catch its drift or complete effect, as to the consequence of drawing down water on the American side, and he said you could draw a certain amount upon the American side, in his view, without really exposing the bare rock; but, as I understood, he did not think it would interfere with the volume and effect, or the volume of the flow. May I ask you what that amount was that you then said?

Doctor CLARKE. I do not think I made a specific statement.

Mr. STETSON. I was not sure whether you did or not. Did you mean to say it had reached the limit, or that there was still further—

Doctor CLARKE. I should wish to be very guarded in a statement of that kind without further thought.

Mr. STETSON. I would not ask Professor Clarke, then, to answer that; but I would be glad if after further thought he would submit a memorandum of that to your honor. That is the kind of thought I welcome here, because we would not want to do anything that is going to injure the Falls any more than Mr. McFarland. I am glad Mr. McFarland's judgment has not been subjected to the embarrassment of having a financial interest in this question.

These remarks, as I say, bear generally upon that subject, as to the amount of water that could be taken from each of the two sides of the Falls, which is the question we have been brought back to, as I understand it, notwithstanding the debate of last July.

I proceed now somewhat more directly to the consideration of the Canadian side. But before I do that I have a few compliments to pay to Mr. McFarland, in view of the circulars that have been rained in on me for some time; and I wish at the outset to refer to my footnote on the first page of my printed reply:

In his excess of zeal in a cause which in its intention is highly meritorious, Mr. McFarland has made attacks upon our companies so unfounded as to compel me to dissect and to refute them. This necessarily gives to my remarks more of a personal turn than I desire, for I understand that Mr. McFarland has been and is a useful public citizen. I have nothing to say in derogation of his character or his motives, though in this discussion, like the cowboy in the western mining camp, he does seem to be "uncommon free with his gun."

Mr. McFarland made a point last summer of referring to the American Commissioners as "the very able governmental Commission which has looked into the physical details of this question." He now refers to them as "the corporation-favoring International Waterways Commission." I do not know when they underwent that change of heart or character which called for that different designation. Mr. McFarland has contested and challenged the contents of their report, and has "gone to the country," his constituents. While this bill is the product of the Congress of the United States, who ordinarily are supposed to be the representatives of the people, Mr. McFarland in July stated that he was "the lone representative of the people," and he now has gone back to the people to get their official expression upon you. Well, his appeals have been most extraordinary. He has called for a flood of personal letters. He has called for a Niagara flood of letters, and in the third emergency call he asks for a still greater flood, so that if his call were to be literally complied with, as perhaps it has,

it would convert the War Department into a bureau of rivers and harbors.

As I have said before, if his statements were justified in my opinion I would be with him entirely.

There are certain of his statements that bear so directly upon the company I represent, and which illustrates the state of mind of Mr. McFarland, who acts as the representative of this attack, that I must reply to at least some of them.

The first statement he makes that attracts my attention is, that the Canadians already have cut off 500 feet of the Horseshoe Falls "to accommodate a power company," and again "to give a better chance to one of the power companies."

That statement is absolutely, unqualifiedly, and unnecessarily untrue. Mr. McFarland has been advised of its untruth, and he was advised of its untruth on July 12 last, by Mr. Douglass, who sits there, the mayor of Niagara Falls, in the presence of Mr. P. P. Barton, who sits there. Mr. Douglass, within thirty minutes afterwards repeated the truth to yourself there at Niagara Falls, which I have the documents to substantiate.

There have not been 500 feet cut off from the Horseshoe Falls. The facts are these:

After the fall of Table Rock, and the consequent erosion of the concavity of the Horseshoe Falls, the current sought and deepened the central channel, exposing the higher margin of the Canadian shore. To reclaim this exposed margin was the continuous purpose of the Canadian commissioners from their appointment in 1887, prior to any power development. In pursuance of this purpose they have caused to be reclaimed an area which, measured along the crest line of the Horseshoe Falls, extends 400 feet, but at right angles to the original shore line only 175 feet, and this reclamation they deem to be for the public benefit. Of the 400 feet reclaimed, 150 feet have been reclaimed prior to 1895; that is, before any work had been begun there, and this 250 feet has been reclaimed since.

These facts appear, if you care to have them, in the reports of the Queen Victoria Niagara Falls Park commissioners. It is stated in the seventeenth report, at page 45 and page 8. In addition to that I have this expressive letter, written last week to our company by the head of the commission. It is found on page 4 of my brief.

QUEEN VICTORIA NIAGARA FALLS PARK COMMISSIONERS.

Toronto, November 20, 1906.

CANADIAN NIAGARA POWER COMPANY,

Niagara Falls, Ontario.

DEAR SIR: Referring to the following statement contained in the pamphlet entitled "Imminent danger to Niagara Falls," viz. "They have already cut off 500 feet of it (Horseshoe Falls) to accommodate a power company!" I have only to state that the instruction to your company to deposit the waste material from tunnels, and so forth, on the margin of the river was for the purpose of improving the scenic conditions of the river shore. Owing to the continued falling away of enormous masses of rock at what might be called the apex of the Horseshoe Falls, drawing the water from the shore line into the center of the river, the river on the Canadian shore had become dry, exposing large areas of unsightly boulders and ragged rocks.

The commissioners, therefore, thought it well to take advantage of the work of excavation, which was then in progress, in order to remedy these unsightly conditions brought about by the water receding from the shore line.

So far from the commissioners being under the dictation of your company, or any other power company, in this particular, they acted according to their best judgment, and they believe they have succeeded in enhancing the æsthetic conditions of the Horseshoe Falls, as well as of the shore line approaches thereto.

Believe me, yours, truly,

J. W. LANGMUIR, *Chairman.*

What can be thought of the responsible thought of a gentleman who, being warned and told the facts just as they develop under this letter, should undertake to go to his constituents, the great American people, with the twice-repeated statement that this was done by us for our purposes?

Mr. McFarland has made a series of statements about the water likely to be withdrawn. Your honor has very forcibly animadverted upon that proposition by statements from your engineers, to which Mr. McFarland addressed some extraordinary criticism, as it seemed to me, when he questioned the right of the Secretary of War to refer the matter to his own advisers, the engineers, for information not within his personal knowledge.

As to the amount of water likely to be withdrawn, Mr. McFarland is not only not consistent with the truth, but not consistent with himself. He says: "A recent examination of the tailraces and channels intended to turn the water into the Niagara River after it has been used in the great turbine wheels of the existing Canadian plants shows that their aggregate section is 68 by 72 feet."

There we have his own statement as to what water can be carried out. It is altogether too large as you will presently see. But that is his own statement, and I want you to hold that for comparison with some of his subsequent statements. "The velocity of water now beginning to rush through these vast channels is at least five times that of a rapidly flowing river. Is it likely the volume of water which will pass at Niagara speed through a channel as wide as a city boulevard and as deep as a six-story office building will not make any difference in the volume of the Falls?"

It may be that in the city of Harrisburg a boulevard is not over 72 feet wide, but they are wider in other cities, including Paris.

The aggregate section of 68 by 72 feet given by Mr. McFarland would be a prism of 4,896 square feet, and which is about three times the aggregate of the actual cross section of the tailraces of the three Canadian developments, whose measurements are as follows:

	Square feet.
Canadian Niagara Power Company tunnel, cross section-----	405
Electrical Development Company, cross section, approximately-----	514
Ontario Power Company, tailrace, approximately-----	720
Total -----	1,639

for the ultimate development of 180,000 horsepower. Their method of using the water being somewhat different from ours, we have to estimate that, but I think, General Greene, that is fully as large as the discharge you have there.

General GREENE. I did not hear the first part of that.

Mr. STETSON. That 720 feet I think is fully as large as your cross section. Your method of using the water is not the same as ours, and therefore it could not be computed as mine can, but I think 720 feet is fully as large as the cross section of your discharge.

General GREENE. 720 square feet?

Mr. STETSON. Yes.

General GREENE. Yes.

Mr. STETSON. I think it is fully as large—those aggregate 1,639 feet. Mr. McFarland has it—I don't know where he got it—that the aggregate section is 68 by 72 feet. That would be 4,896 feet. He has made the statement there that the aggregate section is three times as large as any we can figure out from an aggregation of the three developments.

Mr. McFarland further states: "Another computation shows that the water it is proposed to abstract on the Canadian side alone would make a rapidly flowing river 1,685 feet wide and 18 feet deep." And in another place—"a rapidly running river nearly half a mile wide and 18 feet deep."

The engineers of the Niagara Falls Power Company advise me that this statement is even more wide of the truth than those already dissipated.

The amount of water on both sides, which under the temporary permits of the Secretary, and the report of Captain Kutz, it is proposed now to abstract, would be 26,100 feet per second. I give the calculation at the bottom of page 6 of my brief. This volume of water, flowing out of a river 18 feet deep and 1,685 feet wide would make a "rapidly flowing river" only if this term, borrowed from Mr. McFarland, could be applied to a stream running at the rate of less than half a mile an hour, which may be compared with the water in the Schoelkopf Canal that runs about 5 feet per second, or, approximately, 4 miles an hour.

Mr. McFarland endeavors to heighten the peril by stating that "The volume of water thus withdrawn will more than equal the present average outflow at the mouth of the Hudson, Delaware, and James rivers combined."

But these are tidal rivers, and the outflow at their mouths is inconstant and is not susceptible of comparison with the current of Niagara, which at all times is a rapidly flowing stream. It is possible that because of the slowness of current all of these three tidal rivers in their entire volume at their mouths would be inadequate to the regular production of 350,000 horsepower; but we repeat, in the present case, terms of horsepower are not suitable terms for comparison. As already observed, Mr. McFarland himself has stated the aggregate section of the water which he charges is to be withdrawn, viz.: a prism of 68 by 72 feet, this being three times the prism actually contemplated. But take this prism, 68 by 72 feet, and how would that compare with the combined outflow at the mouth of all of these great rivers?

Mr. McFarland scoffs at the contention that the withdrawal of the amount reported by your advisers will have no appreciable effect upon the scenic grandeur of Niagara Falls, and cites, "The sober finding of the American members of the International Waterways Commission, that 'the glory of Niagara Falls lies in its volume of water rather than in its height or in the surrounding scenery.'"

But, as stated by Mr. McFarland in his circular of November 5, this "is the very same body that has recommended to Secretary Taft to permit the admission of 160,000 electrical horsepower from the Canadian side." Why should the capacity or the fairness of this body now be questioned?

Mr. McFarland flouts the engineers who insist that no damage will be done to the Falls, "those who bring the oldest inhabitant of Niagara to testify that he can not see any difference." He prefers to rely upon "Recent visitors to the Falls," who "insist that there is already evident a substantial reduction in their glory."

The suggestion of Mr. McFarland as to a present apparent depletion of Niagara, must have been refuted by the personal observation of the Secretary upon the day of the hearing at Niagara, July 12, 1906, when the works upon the American side were in full operation. I am not the "oldest inhabitant," but after nearly twenty years of continuous observation of the volume and flow at Niagara Falls, I am prepared to maintain, and I challenge successful denial of the proposition, that upon that day there was no diminution of the volume or flow of the Niagara River which was susceptible of observation. Neither is there now any appreciable diminution.

This accords with the view of Mr. C. K. D. Burton, whose highly intelligent and able plea for Niagara's preservation in Leslie's Weekly for November 8, though not wholly free from error, is commendable for its purpose to treat the subject fairly. Mr. Burton, in substance, concedes that "the Falls have not suffered perceptibly as yet," and states that "measurements show that the present diversions have lowered the water at the brink a few inches," though he thinks that possible future diversions to the full extent authorized "may well be subject for apprehension."

I commend that article to anyone who wishes to see that subject stated fairly, next after the statement of Professor Clarke.

This is in accordance also with the testimony of the water gauges, which at least three times a day for more than fifteen years have been maintained and examined by the Niagara Falls Power Company and by the Schoelkopf Company. We find no substantial diminution from those gauges, and neither do the Schoelkopf people.

These observations show not only that there has been no observable depletion of the American Falls, but that there has been no material diminution, even when tested by water gauges.

Then I want to call your honor's attention to this aspect of the matter. The fact is that the draft upon the American side has resulted in the reestablishment of the regimen of the river by contribution from the Canadian side, where the water is deeper.

I do not mean that we draw the water back from below Goat Island, but diagonally across the river from above Goat Island.

It has been suggested by some, though doubted by others, that the additional waterways furnished by the tunnels tend to increase the rapidity of the flow in the river itself, and thus to draw more rapidly upon the ample reservoirs of Lake Erie. In its effect upon this reserve the largest proposed diversion would be insignificant.

That was the view of Professor Williams, but was not accepted by General Ernst nor Mr. Brackenridge. That was the subject of discussion, and I have referred in my brief to the page of the proceedings where the testimony can be found.

Mr. McFarland permits himself to indulge in the following insinuation, which is unworthy, and in its necessary implication is absolutely false. He says: "It is reported that they are ready to deceive the authorities, for one of their engineers unwittingly disclosed the fact last July that preparations had been made to bring

in 40,000 horsepower, and to expend it or waste it through rheostat, in order that they might claim and show by instrument that they are actually transmitting that enormous amount of power."

The reference here is to the Canadian Niagara Power Company, which I represent. I appeal to the personal experience of the Secretary of War, or his engineer, Captain Kutz, and of the American members of the International Waterways Commission, whether the conduct and bearing of the Canadian Niagara Power Company and its officers have not been such as absolutely to refute the suggestion that it has been "ready to deceive the authorities," even though it was silly enough to wish to do so. All of its works and records have been thrown open fully and cheerfully to all of the authorities. It would have been futile, as it would have been base, for the company to make any false pretense that it was otherwise disposing of an amount of power that it was carrying only to waste in a water rheostat. Any such false pretense could not have survived inspection for five minutes.

However, it is true, and it was perfectly legitimate, that upon the introduction of the Burton bill it was considered whether, in order to demonstrate the actual producing and carrying capacity of its Canadian works and conduit as actually installed and not to deceive, this company should not carry to the American side not 40,000 horsepower, but 16,000 horsepower, in addition to the 16,000 stated by me at the July hearing.

When, Mr. Secretary, you asked me at the July hearing how much we were carrying to the American side, I answered 16,000. I did not say 32,000 horsepower or 40,000 horsepower. That was the first time the question was raised. The condition was necessarily obvious to the authorities, and how could we attempt to deceive the authorities? The project of transmitting 32,000 horsepower was considered, although, because of delays in the completion of our new transmission line (now in operation), we were not then prepared usefully to employ the power. This being so, the actual capacity of the generators and conduits as then installed could have been demonstrated practically only by carrying the power into a water rheostat, for no other disposition would then have been practicable. There was no secrecy about this proceeding, and the prominent location of the buildings would make any such preparations a matter of common knowledge as well as the obvious intent. The facts were always accessible to everyone, including Mr. McFarland, and there would have been no necessity for misstatement either by the company or Mr. McFarland, either as to figures or as to motives. But the idea never advanced beyond preparation. It is not strange that the distortion of such a perfectly proper proceeding should be introduced by the words, "It is reported that."

Mr. McFarland states that at the hearing at Niagara Falls on July 12 all of the Canadian power companies "agreed on one point, which was that the American public was very foolish in interfering with their beneficent desires to produce power at its expense."

I appeal to the record, as well as to the memory of the Secretary, for the refutation of this statement, certainly so far as I am concerned.

Upon that occasion I began my remarks by stating that I believed, and should give my reasons for believing, that the impairment of

Niagara would not be so serious as anticipated by Mr. McFarland, and that if it were to be as serious as anticipated by him, I should be with him entirely. (Record, p. 21.)

And now I repeat, as firmly and comprehensively as I can, that I have nothing but respect for the sincere men and women who, by appeals sometimes as incendiary and erroneous as those of Mr. McFarland and sometimes more temperate, but not founded on investigation, have been stirred to anxiety lest the greatest natural wonder of northeastern America is to be destroyed or impaired. This anxiety is praiseworthy, and did I believe the peril were real, I should stand with those who feel and express this anxiety. If I believed that the pioneer companies I represent would have produced any such result, I would cheerfully forego every penny of possible profit rather than further the enterprise. But I do not so believe, nor after their exhaustive investigations did Judge Burton or his committee so believe, for otherwise they would not have reported the bill which invests you with your discretionary powers up to the limit fixed by the law under which we are now proceeding.

The question is not as suggested by Mr. McFarland, one as to the folly of the American people, but is one of fact—"Will or will not, the Falls of Niagara be affected appreciably by the diversion or the transmission of the waters to the extent recommended by the American members of the International Waterways Commission?" This is the question which to the extent of 350,000 horsepower from the Canadian Falls Congress decided to leave open for determination by you, and it is the question upon which you have chosen to take capable and professional advice from your captain of engineers and the American Commissioners. It is the question also concerning which the advice of these Commissioners as to the aggregate quantities that may be withdrawn is the basis of our appearance before you to-day.

It is an insult not only to the companies whose position he belies, but also to yourself, that Mr. McFarland should have issued the misstatements of which he has been guilty. He has advised the American people that "Resolutions and petitions have little force, but a flood of personal letters will be effective. This flood should begin to drop in upon Secretary Taft at once and continue until November 15."

A "flood of personal letters," induced by such a cloud-compelling appeal can have little weight with the Secretary, not even though the flood were to equal "the combined outflow at their mouths of the Susquehanna, Potomac, Hudson, Delaware, and James rivers." This is a case in which apparently Mr. McFarland has proceeded upon the second line of the Lincolnian canon, that you "may fool all of the people some of the time."

Disregarding the statutory regulations of the Niagara Falls Power Company, which at its own suggestion limited its right to 200,000 horsepower—

And here, I wish to make a diversion for a minute. In 1891, when Mr. Andrew H. Green discovered that the water was falling three years in advance of our tunnel, I saw that we were likely to encounter agitation such as this that is coming now, founded upon a misunderstanding of the situation, which might imperil our rights. I did not intend to have our rights rest solely upon the legislative ground. I said "We will have a contract."

So I drafted a contract with the State of New York, which was the owner of that property, that we would furnish power free to the State for the use of its commission, for the use of its reservation, and that we should therefor have the right to take 200,000 horsepower. Up to that time we had two charters. We had the charter of the Lewiston company, which we had allowed to lapse, and we had our own charter, without limit, and to meet that question I wrote there the express limitation of 200,000 horsepower before the other company put it in in 1896, and there was the reason of that limitation. The foundation was suggested by us and was not imposed upon us. We already had an unlimited right, as has since been decided in respect to another charter by the courts of our State.

Mr. McFarland states that the power-developing companies were perfectly satisfied to have all the water they wanted for nothing from the State of New York, and this in the face also of the fact that, as has been decided by the courts, the power companies upon the American side, being the riparian owners, received from the State of New York nothing to which they were not entitled by virtue of their riparian rights. Neither the State of New York nor the United States were the owners of the running waters as against the riparian owners.

Finally—and I will be glad to reach the close of this personal side of it—Mr. McFarland states that, "Not content with getting free water from the United States to produce profit-bearing water power, the Niagara Falls power companies have introduced considerable water into their stock, it is said, which is free to those inside, but expensive to the public."

I have indicated why he is in error in saying that we get free water from the State.

This statement can refer to only two companies, the Schoelkopf Company, which has a stock of only \$100,000, of which no part has ever been sold to the public—

Secretary TAFT. Has that been increased?

Mr. STETSON. No; the capital stock is \$500,000, and not \$100,000. I would like to have that correction made. It is all owned by the original group and has not been sold. His charge can refer only to the Schoelkopf Company and to the Niagara Falls Power Company, which has a capital stock of about \$4,000,000, which has never been sold above 80 cents on the dollar, and which in the sixteenth year of its issue sells for only 50 cents on the dollar, owing to this kind of agitation, although in the opinion of the company it represents an investment fully equal to the par amount of the stock.

Mr. McFarland refers to the greed of these companies. The extent of that greed may be indicated by the fact stated by me at the July hearing, that for fifteen years the Niagara Falls Power Company has been contented to continue with a cash investment of over \$20,000,000, receiving only ordinary interest upon the cash investment represented by its bonds, and without a dollar of dividend upon its stock, in which alone could be found any opportunity for real profit. A corporation whose activities and energies are directed to and satisfied by the return of ordinary interest can not justly be accused of greed.

I understand that some comment has been made upon the statement that no dividends had been received as being a statement that

means nothing. It means everything. It means that we have received only ordinary interest, and that always the profit has had to go back into the property, and there it stands to-day, with the stock selling at 50 cents on the dollar. I say that, so far as the Niagara Falls Power Company is concerned, it was not started with the main purpose of commercial profit. There was never a promise of large commercial profit. Men were attracted, and perhaps deluded, with the idea of the useful service that they were rendering to mankind by producing electrical power in this novel way, of which we were the pioneers for the whole world.

Mr. McFarland refers to a newspaper publication of a plan of merger of the four power companies of Niagara Falls, so as to create a monopoly, and asks: "Should the United States protect this potential monopoly?"

All four companies are represented in this room, and I defy one of them, I appeal to any one of them, to indicate whether there is any thought of a combination or monopoly. We are all fighting each other as fiercely as Mr. McFarland is fighting all of us. There is no thought of combination that I know of. I will have something further to say about that in another branch, about the international treaty.

The suggestion of an intended monopoly is absolutely untrue in fact. Neither the Niagara Falls Power Company nor its subsidiary, the Canadian Niagara Company, has now any intention of entering into a combination with any company, and against any monopoly, though intended sufficient protection would be afforded by the provisions of each of their charters.

In the Canadian charters is a most absolute provision against any sort of combination except with the consent of the commissioners. We would have to get the commissioners to give their consent; and in the charter of the Niagara Falls Power Company is written the words by me in 1889, that this shall not authorize or permit a monopoly. So I do not now see how the thing could be done. Mr. McFarland will, perhaps, give us the information.

Mr. McFarland indiscriminately assails all of the power companies, irrespective of the fact upon which I dwelt at the July hearing, that the two pioneer companies, the Niagara Falls Power Company and the Schoelkopf Company, were absolutely immune against any charge that their operations would or could appreciably diminish the volume of Niagara Falls. This fact was the subject of examination and final report by the committee of the New York constitutional convention of 1894, the report, upon page 11, stating: "Two of them [that is, the Niagara Falls Power Company and the Schoelkopf Company] have expended large sums of money, and are now operating their respective plants, and the amount of water which they take will not do any appreciable injury to the falls."

That was before anyone else had come on.

At the July hearing, in answer to my question as to his view of the effect of the diversion by the Niagara Falls Power Company, General Ernst replied: "If you were the only persons concerned you would probably never have heard all this agitation."

Upon this impressive recognition of our innocence of the charge of injurious assault upon Niagara Falls I am content to rest.

The next heading in my brief, in fact the next two headings, have a very important bearing upon these further charges and statements, and as supplementing Mr. Ely's admirable remarks in respect of the effect upon western New York and its manufactures. Mr. McFarland has undertaken to say that the prices of power here are not reduced through our operations. How absolutely fallacious this statement is will appear in a moment, as I pass on.

The Niagara Falls Power Company, this pioneer in the development and establishment of great electrical central power houses and lines of transmission, has conferred an inestimable benefit on mankind, and in an especial degree upon the Niagara frontier, to which it is now delivering more than 100,000 horsepower.

I ask you, Mr. Secretary, kindly to remember that we are delivering more than 100,000 horsepower to-day; for all the power you gave us permission to bring from Canada has been availed of, and we stand with customers waiting at our door. We have an application from one company for 25,000 horsepower, and that is awaiting the result of this hearing. If the permission can not be given, we can not supply it, on the American side at least.

As I say, this company is now delivering more than 100,000 horsepower at prices which, though misrepresented and ridiculed by Mr. McFarland, are readily accepted by hundreds of users, and this without compulsion.

Nobody is obliged to use our power. All of the takers could have continued to use steam engines. Why should they use our power to the extent they are using it—100,000? Why do none of them give it up?

When this charge was made a most remarkable statement resulted. Every user of Niagara power in the city of Buffalo—not one, not two, but everyone—wrote us a letter, and those letters were published, covering two pages of the Buffalo papers, two full pages, showing their satisfaction with our service. We have no trouble with our customers.

Let us see what these prices are. The Niagara Falls Power Company has published its schedule for standard ten-hour meter power at a rate which offers a maximum use of 100 horsepower and an average use of 75 horsepower for a month of 250 hours, at an aggregate price of \$144.17. This compares with the following reported charges in six important northern cities:

Boston	\$937. 50
Philadelphia	839. 25
New York	699. 37
Chicago	629. 43
Cleveland	559. 50
Rochester	419. 62
Niagara Falls	114. 17

In the face of such figures, who can doubt the beneficent effect of the operations of the Niagara Falls Power Company, furnishing power at not more than one-fourth of the cost in New York, Chicago, or Cleveland, and at less than one-fifth of the cost in either Boston or Philadelphia?

Mr. McFarland's statement as to the cost of the public lighting in Buffalo, misleading as it is, has nothing to do with the case. Neither the Niagara Falls Power Company nor its ally, the Cataract Power

and Conduit Company, has any relation to or control over the public lighting in Buffalo. They merely sell and deliver electric current to the lighting company the same as to any other customer over whom they have no more control than the paper seller has over the imagination which Mr. McFarland indiscriminately impresses upon his voluminous printed output.

In great numbers, our customers have come to Niagara Falls, which at the beginning of our work was a country village with comparatively few industries, until now it has become a prosperous city, the ninth in the State in the volume of industrial products, approaching \$20,000,000 per annum. Let me call your attention to the figures at the bottom of page 14 of my brief. Bulletin 57 of the Census of Manufactures for 1905 shows the following increases in the value of manufactured output from 1900 to 1905:

Buffalo -----	from	\$126, 156, 839	to	\$172, 115, 101
Niagara Falls -----	from	8, 540, 184	to	16, 915, 786
Lockport -----	from	5, 352, 669	to	5, 807, 908
Rochester -----	from	59, 608, 969	to	82, 747, 370
Syracuse -----	from	26, 546, 297	to	34, 823, 751

The value of the output of Niagara Falls was almost entirely doubled, and Lockport, right alongside, had an increase of only \$500,000, and it was the larger place before we started these works.

All this without apparent diminution in the apparent volume of Niagara River, and with a steady increase in the number of visitors, not only to the Falls, but to our power houses as well. The moderate admission fees charged to such visitors are used for the benefit of employees.

In the year 1899 our continuing achievement was well described by Theodore Roosevelt, then governor of New York, who completed his inspection of our works by writing over his subscription in our visitors' book, "A marvel indeed."

How great is the marvel, and how splendid the achievement, has been eloquently expounded by that inspired seer of both present and future, Mr. H. G. Wells, in the following wonderful words, written without previous knowledge of or inspiration from our companies, and published in the Harper's Weekly of July 21, 1906:

The dynamos and turbines of the Niagara Falls Power Company, for example, impressed me far more profoundly than the Cave of the Winds—are, indeed, to my mind, greater and more beautiful than that accidental eddying of air beside a downpour. They are well made visible, thought translated into easy and commanding things. They are clean, noiseless, and starkly powerful. All the clatter and tumult of the early age of machinery is past and gone here; there is no smoke, no coal grit, no dirt at all. The wheel pit into which one descends has an almost cloistered quiet about its softly humming turbines. These are altogether noble masses of machinery: huge, black, lumbering monsters; great, sleeping tops that engender irresistible forces in their sleep. They sprang, armed like Minerva, from serene and speculative, foreseeing and endeavoring brains. First was the word and then these powers. A man goes to and fro quietly in the long clean hall of the dynamos. There is no clangor, no racket. Yet the outer rim of the big generators is spinning at the pace of 100,000 miles an hour; the dazzling clean switchboard, with its little handles and levers, is the seat of empire over more power than the strength of a million disciplined, unquestioning men. All these great things are so silent, as wonderfully made as the heart in a human body, and stouter and stronger than that. * * *

When I thought that these two huge wheel pits of this company are themselves but a little intimation of what can be done in this way, what will be done in this way, my imagination towered above me. I fell into a day dream of the coming power of men and how that power may be used by them. * * *

For surely the greatness of life is still to come; it is not in such accidents as mountains or the sea. I have seen the splendor of the mountains, sunrise and sunset among them, and the waste immensity of sky and sea. I am not blind, because I can see beyond these glories. To me no other thing is credible than that all the natural beauty in the world is only so much material for the imagination and the mind, so many hints and suggestions for art and creation. Whatever is is but the lure and symbol toward what can be willed and done. Man lives to make—in the end he must make, for there will be nothing left for him to do.

And the world he will make after a thousand years or so.

I, at least, can forgive the loss of all the accidental, unmeaning beauty that is going for the sake of the beauty of fine order and intention that will come. I believe—passionately, as a doting lover believes in his mistress—in the future of mankind. And so to me it seems altogether well that all the froth and hurry of Niagara at last—all of it—dying into hungry canals of intake, should rise again in light and power, in ordered and equipped and proved and beautiful humanity, in cities and palaces, and the emancipated souls and hearts of men. * * *

We readily accept the characteristically fine statement of President Roosevelt that Niagara Falls should be preserved "in all their beauty and majesty," and we rest confidently on the proposition already announced by us, and elaborated at the July hearing, that no use of Niagara waters accomplished or proposed by either or both of our two pioneer companies, who have spent hundreds of thousands of dollars to secure the most appropriate architectural effects, would diminish either the beauty or the majesty of Niagara.

If there is to be any such injury, it will be because of the proceedings of later comers, whose plans originated and have developed subsequently to ours. For their actions, if injurious, our two power companies should not suffer. Those later comers undoubtedly will be able to speak for themselves. They can not speak or act to the detriment of our prior rights and the innocuous character of our separate and independent exercise of those prior rights. They have filed briefs apparently in attempted diminution of our rights, although we had not in any way attacked them. We are forced now to an assertion not only of our rights, but of our priority of right, even if necessary to the entire subordination and possible exclusion of any beneficial enjoyment by them.

I shall pass over that branch of my argument until later, and now I come to my discussion of treaty rights, which you will find on page 23, and that is in accord with what Mr. Ely has said.

Mr. McFarland rests his two "emergency" calls particularly upon the propositions, first, that Congressional legislation will prove ineffectual unless supplemented by an international treaty, and secondly, that "confidential advices from the State Department at Washington indicate the improbability of success in negotiations with Canada for the treaty unless the United States shows a real desire to preserve the Falls."

I wish to observe that the confidential communications here stated to have been received from the State Department, and those which appear to have been acquiesced in by the War Department, have not been from or by power companies. I appeal to everybody who has any knowledge of the subject whether the power companies have not done all that they have done upon a public and open record. If there has been a honeyfugling attempt to deceive the authorities, it has not been by the power companies, or at least by those I represent.

Thereupon Mr. McFarland proceeds to make the following statements:

(a) The United States is now in a position to either save or ruin Niagara Falls. If we freely admit all the electricity the Canadian companies want to send in, we divert the water from the Falls as directly as if we had control of the Canadian frontier. If the United States denies admission to this power it will not be produced, and the glory of Niagara will continue.

(b) Insist respectfully that he (Secretary Taft) refuse to admit any power from Canada not now being admitted, because in so refusing he will be preventing the depletion of Niagara.

It is hardly conceivable that the author of these two sentences above quoted could have seriously considered their effect upon an effort to promote an international treaty, which must be written, if at all, with the free will of Canada. How could he, or those who think with him, possibly expect that the friends of Canada would concede a treaty to those who by indirection and through American authorities are virtually proposing in this particular to accomplish the "control of the Canadian frontier?"

The fair disposition of the Canadian authorities is plainly shown in the unanimous conclusion of the members of the International Waterways Commission, both of the United States and of Canada, as embodied in the report of May 3, 1906, transmitted to Congress by President Roosevelt under the date of May 7, 1906 (see pamphlet entitled "Preservation of Niagara Falls," House Report 18024, p. 283).

In this report the Commission stated that while it was not fully agreed as to the effect of the diversion from Niagara Falls, all were of opinion that more than 36,000 cubic feet per second on the Canadian side of the Niagara River or in the Niagara peninsula, and 18,500 cubic feet per second on the American side of the river could not be developed without injury to Niagara Falls as a whole. Your honor may catch the meaning "in the Niagara peninsula" as referring to the waters that came from the Welland Canal and not to the waters of the river.

Accordingly, the International Commission confined its recommendation to these figures, conceding twice as much draft upon the Canadian side as on the American side, probably because of the greater depth of water at the Horseshoe Falls. But it was stated expressly by the Canadian members that their assent to these conclusions was given only upon the understanding that any treaty or arrangement for the preservation of Niagara Falls should be limited to the term of twenty-five years, and should also establish certain principles, including the right of each country to an equal share in the diversion of international waters whether navigable or nonnavigable.

In the face of this reasonable declaration how could anyone imagine that an international treaty would be facilitated by the suggestion that by discriminating against Canadian diversion and importation the United States in this particular may virtually control the Canadian frontier?

We should all concur in the unanimous conclusion of every member of the Waterways Commission, Canadian as well as American, that "it would be a sacrilege to destroy the scenic effect of Niagara Falls;" but we must recognize also that while Niagara Falls is a wonder, "fair play is a jewel." Such an indirect attempt to control

the Canadian output certainly would not lead to the Canadian belief that we were disposed to play fair.

To a considerable extent the Canadian Niagara Company represents Canadian capital, but to a still larger extent, American capital. Nevertheless, it is a Canadian company, entitled to the protection of its Canadian contract, and cheerfully recognizing and prepared to fulfill its Canadian obligations under that contract. As stated by me at the July hearing, it desires the opportunity to use in the United States all of its power not required to meet the Canadian demands upon that contract, to which demands, when received, it will make prompt and cheerful response. The counsel of the Electrical Development Company of Ontario have misapprehended my statement when they say that our "company is not desirous of entering into any contract with the Province of Ontario." Of course the Canadian Niagara Company is desirous of remunerative business in Ontario, as well as elsewhere, and has submitted a most reasonable bid to the Ontario government. Here and now the Canadian Niagara Company rests its case here upon a consideration of its rights as a Canadian corporation, and not upon any pretense that, representing American capital, it has therefore any particular right of hearing which is not open equally to the Electrical Development Company of Ontario, representing especially Canadian and English capital.

The three applications of the three Canadian companies for the right of transmission can not be, and will not be, decided by you upon a consideration of the nationality of the holders of the corporate securities.

How essential is the right of transmission even in the view of the Electrical Development Company of Ontario is stated in the brief of that company at page 3, where it points out that if the amount of power which can be sold by interested parties in Canada is to become a basis of division of power to be imported into the United States "each of the companies would doubtless willingly abandon all sales in Canada, so as to be permitted a larger entry into the richer markets of the United States."

This frank declaration of the Electrical Development Company—Canadian both in incorporation and in membership—serves to indicate not only its own slight appreciation of its home market, but also the sense of injustice that would be induced generally in Canada by unjust discrimination against the right of importation of Canadian power.

Since writing the foregoing we have received Mr. McFarland's third emergency call, dated November 19, in which again he complicates the possibility of international arrangement by the following extraordinary plea:

Now there is another opportunity. Because Canada, while planning to produce 415,000 horsepower in destroying Niagara, can herself use less than 50,000 horsepower, her power companies propose to sell it in the United States. Here is our opportunity. The Secretary of War controls absolutely the admission of this power. If he shuts it out, the water which would otherwise be harnessed for the power companies will thunder its way unfettered over the great cataract.

Inclosed are some Niagara preservation post-cards. Get each one quickly into the hands of a man or woman who cares a single cent for Niagara and let Secretary Taft thus see what the country thinks of the claims of the power companies. Ask him to admit no Niagara electrical power from Canada.

If this plea for the total exclusion of Canadian power were to prevail, the following results would happen:

The companies which have invested large sums of money in the establishment of their works would find their investments unprofitable, except to the extent that they could find consumers of power in Canada. Can anyone be fatuous enough to suppose that thereupon the companies would not seek to protect their Canadian investments by Canadian development, welcomed and assisted by the Canadian authorities? Such establishment and development in Canada of course would involve such concessions in the cost of Canadian power as would afford sufficient inducement to Canadian users. But with sufficient concessions the cost of Canadian power could be brought so low that no railroad in the Province of Ontario could afford to forego the use of electricity from Niagara. Such operation would supply a market for Canadian power vastly in excess of any figures yet suggested.

If we are forced to it, we can go to the railroads. I know what we can do now, and the amount of power we are talking about can be taken on the other side without reference to an international treaty, for under those conditions none would be made.

The Canadian Niagara Company already has its line to Fort Erie, opposite Buffalo, and already contemplates considerable development in that vicinity and elsewhere, which ultimately may make it indifferent whether or not Canadian power shall then be transmissible into the United States.

Thus, in the end, the volume of water taken from the Niagara River would be not less than the amount which would have been taken had the Canadian power been admitted into the United States; while the United States, and in particular the State of New York, would lose through the establishment in Canada of industries which otherwise would have been established in the United States.

Speaking for myself alone, and not for anyone else, I do not hesitate to express the belief that the Niagara Falls Power Company, having a New York charter right for a second tunnel in the city of Niagara Falls, could view with comparative equanimity a positive prohibition of the admission of any power from the Canadian side. Nothing could tend more directly or more effectively to make a reality of the Niagara monopoly which Mr. McFarland has regarded as potential (first emergency call, section 9).

The revealed purpose to coerce Canada into a treaty by laying an embargo upon power importation into the United States of course would affect Canadian development. (See Captain Kutz, p. 14, sec. 29.)

Thus again we are led to doubt that the author of Mr. McFarland's emergency calls had formed an intelligent purpose as to the practicality of an international treaty limiting the Canadian rights.

Upon these considerations, as well as upon those presented last summer, we ask the favorable action of the Secretary of War upon the application and the supplemental application heretofore submitted by the Niagara Falls Power Company and the Canadian Niagara Company for a permit to transmit Niagara power from Canada into the United States, the exact form of the permit to be submitted after decision of the principle.

I will ask leave to-morrow, or whenever your honor wishes, to make a statement relative to the respective rights of the three companies.

Secretary TAFT. Is there anyone else who wishes to be heard?

Mr. GREENE. I should like the privilege of speaking on the same questions Mr. Stetson has spoken on, and from a somewhat different point of view. If I am permitted to go on this afternoon I will agree to limit myself to fifteen minutes by the watch; or, if you put me off until to-morrow morning, I would like a little longer time.

Secretary TAFT. I will hear you now.

STATEMENT OF GEN. FRANCIS V. GREENE, VICE-PRESIDENT OF THE
ONTARIO POWER COMPANY OF NIAGARA FALLS.

Mr. GREENE. I regret very much to say that our senior counsel, Mr. F. D. Locke, is quite ill. You heard him at Niagara Falls. He is quite unable to be present to-day, so the interests of the company with which I am identified will have to be looked after by a layman.

After nearly five hours of speeches, many of them most illuminating and interesting, I still think, sir, the question uppermost in your mind is. What is the real intent of this law; and, secondly, if the intent of the law is to maintain the status quo, what is the status quo? And it is on those two points only that I have anything to say.

First, as to the intent of the law. This law had its origin nearly a year ago in the agitation started by Mr. McFarland and his friends, which led to a brief reference of the matter to the International Waterways Commission by yourself, to a reference to the matter in your annual report, to a brief reference, but a very pointed reference, to it in the President's message, and then to the introduction of the Burton bill, I think in the month of January.

That bill, as originally introduced, absolutely and distinctly prohibited the transmission of power from Canada into the United States; and Mr. McFarland has stated, and he stated it again to-day, that that was what they contended for now and always—the absolute prohibition of the transmission of electricity at Niagara from Canada into the United States.

After the Burton bill was introduced, the subject was referred to the International Waterways Commission, of which General Ernst was chairman of the American section, and after a long and painstaking examination they made their report, I think, about the first of April. And after getting all the facts which they got, they advised you and the Congress that the amount of water, or, as they put it, the limit of water, to be taken at Niagara beyond which you could not go without danger of injuring the falls, was 18,500 cubic feet on the American side and 36,000 cubic feet on the Canadian side. I will ask General Ernst to correct me if I am not right.

General ERNST. That is right.

Mr. GREENE. That is what they recommended as the amount which could be taken without injury to the falls.

General ERNST. No, no.

Mr. GREENE. The limit beyond which you could not go without injury to the Falls.

General ERNST. Yes.

Mr. GREENE. There were hearings in Congress, of which I have copies here, beginning on the 12th day of April and extending to the

8th day of May. Mr. McFarland and all his friends were there, always contending that there should be no electricity brought in from Canada. The hearing covered 200 pages, I think, and as the result of it all Congress passed the law in its present shape, allowing you to grant permits for the diversion of 15,600 cubic feet of water on the American side, and allowing the bringing in of 160,000 horsepower from Canada, thus putting the two sides on an equality; and that, I submit, is the intent of the law—that the Canadian companies have just as much right under this law to bring their power into the United States as Mr. Stetson has to take any water into his power house on the American side.

I recite those historical facts, which I think no one will dispute, as to the way in which this bill was drawn, and as showing what the intent was.

It was contended by Mr. Stevens, representing the chamber of commerce, this morning that you should issue permits, and by Judge Potter also, maintaining the status quo. What was the status quo at the time that bill was passed? I do not think I can explain it better than by the happy illustration you used this morning in regard to the house, that a man being permitted to build a house, when he gets the three stories built is permitted to put the roof on.

The status quo when that bill passed was this. There were power companies on the Canadian side, built or nearly built, with a capacity of 160,000 horsepower, and with transmission lines on this side of the river for at least 90,000 that I know of. So that the status quo will be maintained by your granting permits from Canada for 160,000 horsepower, divided in such proportions as you see fit.

I believe I am at the end of my time, sir.

Mr. McFARLAND. If I might be permitted in advance of the other presentation to close in ten minutes, I should be very glad to do it. It is almost impossible for me to be here to-morrow, and I understand Mr. Johnson desires to be heard upon this matter—

Mr. JOHNSON. Oh, no; I do not propose to address myself to anything except the division of power.

Secretary TAFT. Then you can go on.

CLOSING STATEMENT OF J. HORACE M'FARLAND, PRESIDENT OF THE AMERICAN CIVIC ASSOCIATION.

Mr. McFARLAND. I do not know whether there is any skin left on me. I feel as if most of it had been removed by my genial friend with the smile on the other side of the room, for surely he has done what Mr. Roosevelt said he should do when we talked to him last fall. He said, "Gentlemen, turn on Niagara!" And if I have turned loose on your unfortunate head a flood of Niagara feeling Mr. Stetson has poured upon my devoted head a flood of Niagara objurgation. I pardon him for it, because he says he is interested in Niagara Falls to a greater extent than anyone else in the world, and I hope he is. There is no earthly reason why I should not be satisfied that Mr. Stetson should say anything he chooses about me, if he really loves the falls.

I feel somewhat unfortunate in this matter in having been the target of all this effusion, which really I am impelled to believe does not materially change the issue. I think General Greene has stated

the issue, and I feel very much like coinciding with most of his position, free from oburgation or of appeal to that which Mr. Stetson has well termed sentimentalism.

It is a question of the construction of the law, and the immediate question now is as to the construction of that part of the law which relates to the admission of power from Canada.

Mr. Ely in his address spoke practically for the Niagara frontier, and he urged its relation to this matter of admission of Canadian power as having a part in a great industrial development. There can be no doubt whatever as to the truth of that suggestion; but I submit to you, Mr. Secretary, that industrial development is a mere transfer of population, not always attended with a beneficent effect. For instance, Pittsburg, which is certainly one of the greatest industrial centers in the world, sometimes really becomes an embargo on trade. Those of us who have to deal with the getting of manufactured products know what a serious thing it is. To carry to a logical conclusion the suggested commercial development would mean the creation, within the commercial electrical transmission radius, of vast industrial congestion of a most unwholesome character. It would mean the shutting down of the steam engines and the shutting off of many small businesses, tending to unsettle conditions more than anything else.

I also recur to the statement of Professor Clarke that there is power within electrical distance to do just this thing. These transmission lines need not be abandoned. This work can be done by water power if we are informed correctly by Professor Clarke. So that even the status quo will not be disturbed if you should, in your discretion, now decline this petition and refuse to admit the power from Canada.

Mr. Ely has spoken of the splendid achievement by New York of making the Niagara Park free. I submit to you that to proceed with this development as it has proceeded leaves the park free, but it certainly injures the magnificent spectacle which the park is intended to afford an opportunity to enjoy. Anyone who stands on the steel-arch bridge at Niagara and looks to the right, as you did on the 12th of May, will have no other feeling.

There is a misconception of our position here. Not one word has been said in any of this literature, which Mr. Stetson, if he was standing in my place now, would call "hot air," suggesting confiscation. It has never been in our minds, and has never been uttered.

Our contention is that under the intent and underlying purpose of this law, in carrying out that law, if you impose hardship upon invested capital, we believe you ought to suggest a remedy for that hardship.

Secretary TAFT. That might be on the American side, if there were an inhibition that could be enforced against the use of water going into a riparian owner's property, a right of indemnification; but it would be a little difficult to figure out, unless Congress were disposed to be very equitable, that there could be any claim to a right of damages against the United States Government for forbidding the importation of anything.

Mr. McFARLAND. I should think so.

Secretary TAFT. And therefore the analogy of the appropriation or expropriation is hardly a correct one with reference to power generated on the Canadian side.

Mr. McFARLAND. So far as it applies to production on the Canadian side; but it would apply to transmission lines erected on this side by American companies.

Secretary TAFT. Perhaps. Still that does not deprive them of the use of their property.

Mr. McFARLAND. No.

Secretary TAFT. They are injured by reason of the fact that they are not permitted to import something; but I suppose the power of the Government to decline to allow importation does not ordinarily form the basis of a claim for damages against the Government.

Mr. McFARLAND. I have not heard that it did.

Secretary TAFT. Therefore the analogy is not a close one. It remains still for consideration whether Congress did not have in mind the interference that property values by reason of such a radical change as the forbidding of the importation of electricity.

Mr. McFARLAND. According to Mr. Stetson there would be no hardship to the Canadian companies, for they would at once proceed to develop their power market in Canada.

Mr. STETSON. I said that would involve concessions.

Mr. McFARLAND. Do you put it on the ground that they would have to make the price so low that the railroad company would use it instead of steam?

Mr. STETSON. I think the Canadian government would take care of the price question in Canada.

Mr. McFARLAND. Mr. Stetson has referred to the "venomous" attacks I have originated. I am sorry he has done that, for there has been no such feeling on my part.

I take this opportunity to express my personal gratification at what I have seen of the fine development about the property of Mr. Stetson's company in Canada. Had I seen that before I made the address at Niagara Falls, I would have adverted to it pleasantly; my statement would have been qualified by the better conditions. I take it that the development of power under the conditions which exist now at the works of the Niagara Falls Power Company is a most creditable development. I am glad that Mr. Stetson's company thought it worth while to spend so much money for what some might call unnecessary beauty. I sincerely wish the whole power development at Niagara was as slightly as that.

Secretary TAFT. Do you not agree that the Canadian companies have made their plans with a very much better view to artistic results than has been the case on the American side?

Mr. McFARLAND. Absolutely. I quite heartily agree with what you say.

There is absolutely no use that I can see, Mr. Secretary, in taking any time in personalities. I would like to say, in my defense, however, that the figures to which Mr. Stetson has adverted so feelingly, in respect to the sections of tunnels of various power companies, were taken from Captain Kutz's reports, and will be found here, with one exception, that I estimated the outfall of the tunnel of the Ontario Power Company. I think that is the one which discharged its water just where it makes the power. If the figures from Captain Kutz's report are taken, and an equivalent area given to that one company, they will aggregate 68 by 72 feet, against which such exception has been taken this afternoon.

Mr. Stetson has alluded to the way Andrew H. Green touched upon this matter. Does he mean to insinuate that if that grand man, the very first man in the State of New York, I think, to introduce the sentimental belief that it was worth while to live in a beautiful world—does he insinuate that that grand man would be here in support of his contention at this time? I think not.

Mr. Stetson again insists that the development of 131,000 horsepower has made no difference whatever in Niagara Falls, and that a development of 350,000 horsepower on the Canadian side will again make no appreciable difference. If this water of Niagara was represented in dollars, and these abstractions for making power were checks upon it, I will guarantee that if it was Mr. Stetson's check that was being drawn he would not say it would make no difference, for it would be traversing common sense, and Mr. Stetson has uncommon sense.

It seems to me that the vital argument presented this morning, outside of my own poor effort to take up the matter in hand, came from Mr. Stevens, in his contention that if these permits are granted conditions are created which make intensely difficult, if not impossible, the recovery of the falls, should it seem wise later on to so attempt. That is, if we are preparing to skin Niagara Falls, we are doing it in such a way as to cause difficulty in trying to put the skin back again. Once this power is transmitted it is practically impossible to recover it. It is possible under the law, but the action of law would be so drastic as to make it difficult, and we could hardly expect a man of your sterling common sense to do it. You would rather refer it to the power that threw the necessity upon you.

As to what Mr. Stetson has said as to the misrepresentations I have been accused of making in appeals to the public, I can answer that to the best of my belief I stated nothing but facts in the various communications I sent out, save where newspaper clippings came into my possession, where I introduced them as newspaper clippings. It is certainly allowable, in appealing to the public, to use figures and comparisons. A cubic foot of water, or 100 cubic feet of water, or 1,000 cubic feet of water, means nothing to the layman; but a comparison with the volume of a river does mean something. That it does mean something you will agree, for you have led me into comparing this water required with the estuaries of great rivers, rather than, as I intended, with the actual fresh-water flow, as I suppose I could correctly have stated it, and I am said to have made a misstatement when in fact I meant none and made none. The diversion is serious enough as it is.

Secretary TAFT. I suppose you would concede that the material question is the proportion to the total amount that the amount withdrawn forms, would you not?

Mr. McFARLAND. I think I would not concede that, Mr. Secretary. I think that all of the testimony goes to show that the beauty and grandeur of Niagara Falls is in its volume, and that abstractions from that must necessarily decrease the grandeur and scenic value.

Secretary TAFT. You mean that the amount of the detraction from its scenic grandeur would not depend upon the proportion that is withdrawn?

Mr. McFARLAND. Unquestionably it would.

Secretary TAFT. And therefore that the effect would be less as the proportion was less?

Mr. McFARLAND. That, of course, I promptly admit. I could not do anything else.

Secretary TAFT. That being the case, do you not think the fairest method to present is the proportion which it is proposed to withdraw?

Mr. McFARLAND. It depends upon whom you are presenting it to.

Secretary TAFT. I agree that it does.

Mr. McFARLAND. If I was presenting it to you in one argument, that is the only appeal I would make; but that appeal made to the public without comparisons would be without force and useless.

I will pass by the objurgations Mr. Stetson has heaped upon me. I think many of them have answered themselves. He has not been free from misstatement at times himself, though I think unintentionally. He is a much better advocate than myself.

The question now at issue is largely that of the admission from Canada. To-day nothing is to be decided as to the use of the water in the United States, and I think General Greene is right in stating that the limiting clauses of the Burton bill place the two nations upon an equal footing, the one important qualification being your own discretion as to what will interfere with the majesty of Niagara Falls.

General Greene did make a misstatement, which was probably unintentional, when he spoke of the introduction of the Burton bill. The bill was not introduced before the International Waterways Commission made its report, but after. That has a very important bearing on the application of the law. When the Waterways Commission made its report Mr. Burton at once drafted a bill enforcing all its recommendations, and it was not until some time afterwards that that was discarded and a new bill drafted, based upon the recommendations made by President Roosevelt to Mr. Burton himself. But that bill reflects the condition of affairs that follows the report of the International Waterways Commission rather than the state of affairs that preceded it.

With one more statement I wish to close the case of the people, whom it seems I have the most unfortunate privilege of representing to-day, and I heartily regret my position in this matter. The people do look to you for the preservation of Niagara Falls in so far as you can bring about that preservation within the strict construction of this act, and we ask you, in behalf of the people, to construe it strictly. These people, as you know, or would know if you had had the physical possibility of consulting 10 per cent of the population, are not people who are moved by idle sentiment only. Mr. Stetson has given me great credit as a falsifier. Does he think I could stampede the governor of Pennsylvania by clamor? Could I excite two bishops, at least, and many clergymen in his own great church into making unguarded statements by a mere clamor? Can I secure from men of undeniable judgment, of position, of wealth, and of corporate interests, vast numbers of statements based upon idle clamor? It is unthinkable. These petitions and these letters which have descended here in a Niagara flood which Mr. Stetson resents, are not the idle outpourings of an unthinking people.

They are words from thoughtful men and thoughtful women, representing the best of America, and I respectfully submit this has been

a continuing feeling. It is the feeling which brought about the introduction and passage of the Burton bill, and it has continued. There has never been a week, a day, or an hour, but what some one has been thinking and talking upon the subject, and its recrudescence at this time is merely a renaissance of the condition that was presented at the time the bill was introduced.

Secretary TAFT. You have read the report of the committee?

Mr. McFARLAND. All of it; yes, sir.

Secretary TAFT. Do you not think the report indicates that the committee thought I ought to grant licenses?

Mr. McFARLAND. Frankly, I think the report indicated that the committee did intend for you to preserve the status quo at the time.

Secretary TAFT. They say: "A report has been filed by the joint commission on international waterways, including both the members from the United States and those from Canada, in which the principle of equality in the amount to be diverted on both sides by the United States and Canada is asserted. In the opinion of the committee this rule should be followed. At the present time, however, the preparation for diversion has been greater on the Canadian side. It is expected, however, that ultimately the diversions on either side will be equal, and that the Secretary of War will keep this principle in view."

I understood you this morning to think that I ought not to grant anything.

Mr. McFARLAND. When you pressed me I said "Shut it all off."

Secretary TAFT. On both sides?

Mr. McFARLAND. Yes.

Secretary TAFT. You object to the report of Captain Kutz. His report is that licenses be allowed to the extent of 150,000 horsepower. That would make the diversion on both sides about equal, would it not?

Mr. McFARLAND. I think so.

Secretary TAFT. How much do you think that would affect the falls?

Mr. McFARLAND. I could not tell you. I want to say here that if I had any idea this would be the end of it I should say let it come in, and let it stop at that. But do you think this will be the end of it?

Secretary TAFT. I do, if I think it ought to be.

Mr. McFARLAND. So far as the life of this act is concerned?

Secretary TAFT. Yes; it is for three years.

Mr. McFARLAND. And your filling of this office is not permanent?

Secretary TAFT. I hope not.

Mr. McFARLAND. And when you go to the higher office to which we hope to call you you will not have direct jurisdiction upon this.

Secretary TAFT. But ought we to deny that which Congress intends, and which on the whole would be equitable, simply because we are afraid that there may be some abhorrent influence, to use Senator Conkling's expression, brought to bear to increase the amount?

Mr. McFARLAND. They will not be abhorrent. They will be as gentle and as soothing as my friend Stetson. He says, and I believe it and agree with him, that the diversion has not ruined the falls; and he says the diversion of each of the other three companies, if it comes out, will not ruin the falls. I am not absolutely a fool, even

if I am, as suggested by those opposed, a knave. The water of Niagara River is one, and it does not separate for these various interests. The Niagara River must be considered as an aggregate.

I believe that is all I have to say.

Secretary TAFT. To-morrow we will assume, gentlemen, for purposes of discussion, that licenses are to be granted, and will hear discussion as to what proportion each company ought to have—that is, we will take the matter up on the basis of Captain Kutz's report, and then discuss that. We will use that as a basis of discussion, and I hope to-morrow we can finish. I should be glad if we could finish it in one session.

An adjournment (at 5.30 o'clock p. m.) was taken until to-morrow, Tuesday, November 27, 1906, at 10 o'clock a. m.

WASHINGTON, D. C., *November 27, 1906—10 o'clock a. m.*

The hearing was resumed before Hon. William H. Taft, Secretary of War.

The SECRETARY. Gentlemen, through an inadvertence yesterday I failed to remember that the first Cabinet meeting for some time would be held to-day, and I can not very well be absent. I am perfectly willing to accommodate myself to the wishes of counsel, and either go on with the hearing this afternoon or postpone the whole matter until to-morrow.

Mr. JOHNSON. It will be perfectly satisfactory to me to go on at 3 o'clock this afternoon.

Mr. COHN. It is necessary for me, Mr. Secretary, if I am to make any statement, to go on to-day, as I am compelled to leave the city. It will not take very much time for me to get through. I have abandoned a hearing at Buffalo to be here to-day. I was to have appeared before the board of railroad commissioners there.

Secretary TAFT. I think there will be no objection to your going on this morning. You do not want, I infer from what you said, more than fifteen or twenty minutes?

Mr. COHN. That will cover our purposes, and whenever it is agreeable I will proceed.

Mr. JOHNSON. Mr. Secretary, if you are going to sit until 11 o'clock—the real fight, you know, is between the three companies.

Secretary TAFT. Yes.

Mr. JOHNSON. This gentleman might go on, and we will try and squeeze ourselves into the time this afternoon.

Secretary TAFT. All right. You may go on, Mr. Cohn.

Mr. COHN. Yes, sir.

STATEMENT OF MORRIS COHN, JR., REPRESENTING THE INTERNATIONAL RAILWAY COMPANY.

Secretary TAFT. Will you give me your name and the company you represent?

Mr. COHN. To avoid any misunderstanding, I have written my name and the company's name on the brief.

Secretary TAFT. The International Railway Company?

Mr. COHN. The International Railway Company.

Secretary TAFT. And your name is Morris Cohn, jr.?

Mr. COHN. Yes, sir.

Mr. Secretary, I appear here on behalf of the International Railway Company, which is alluded to in the report of Captain Kutz, and was represented before you at the hearing in July. That company is not quite, as Captain Kutz states, incorporated both in the State of New York and in the Dominion of Canada. It is a New York State corporation, and it has acquired, by purchase, all of the property, franchises, and rights of the Niagara Falls Park and River Railway Company, which was a corporation organized under the laws of the Province of Ontario. The Niagara Falls Park and River Railway Company was incorporated by chapter 96 of the laws of 1892, and entered upon the construction of its railway by its franchise, and by its agreement with the commissioners, and by the original act it was given the right to develop such power from the waters of the Niagara River and the Falls of Niagara as might be necessary to work, heat, and light its railway.

Secretary TAFT. That is, the Canadian company was?

Mr. COHN. The Canadian company was. Before 1901 that company was acquired in the interest of the International Railway Company.

Secretary TAFT. What was the route marked out on the charter of the Canadian company?

Mr. COHN. I have here a map of the whole international traction system.

The route of this Canadian company extends from Chippewa, just above the Falls of Niagara, to Queenston, and that is all there was of the route of the Niagara Falls Park and River Railway Company.

Secretary TAFT. That was the limitation mentioned in its charter?

Mr. COHN. That was the limitation in the original charter, the act of 1892; in fact, it was incorporated by special act. All the railways there are incorporated by special act, and the act included all its rights, its power to act as a corporation, to operate a railway, and to generate power from the waters of the Niagara River.

In 1900 or 1901—in fact, in both years—legislation was obtained in both the Dominion Parliament and in the legislative assembly of the Province of Ontario and in the legislature of the State of New York authorizing the International Railway Company to acquire all the property, franchises, and rights of the Niagara Falls Park and River Railway Company, and at the same time the right to develop power was changed from power to work, light, and heat the railway of the Niagara Falls Park and River Railway Company to such power as might be necessary for the purposes of the purchasing company; so that the charter as amended clearly gave, first, the right to the International Railway Company to purchase, and, second, the right to the company to develop such power as might be necessary for the purposes of the purchasing company.

The International Railway Company at that time owned and operated all the street railways in the city of Buffalo, and substantially all the street railways in the counties of Erie and Niagara, and all the electric railways in those counties. It was using then, and uses now, a very large amount of power. I think my brief shows, as the fact is, that it utilizes, all told, a minimum of 12,000 horsepower.

Acting in reliance upon this act of the legislature of the Province of Ontario and of the Dominion of Canada, the railway company acquired this Park and River Railway more particularly for its power rights than anything else, because the railway, as a railway, was not a very valuable proposition. The power rights were the important feature, and it was for those rights that the very large purchase price was given for the railway.

Secretary TAFT. When did it acquire it?

Mr. COHN. The actual title was transferred in 1902, immediately subsequent to the acts of the legislature of the Dominion of Canada and the Province of Ontario.

Secretary TAFT. How much power had it developed by the time this act was passed?

Mr. COHN. I can not say as to that, but I should say it was probably about 1,500 horsepower. Of course the acquisition had preceded this amendment of its charter, but it was for the purpose of getting the right to transmit all the power that was ultimately necessary for the International Traction system that the Park and River Railway Company was acquired. That is what gave it its chief value. Of course it was assumed that the authorities of the province would, when the railroad was acquired by the International Traction system, allow that power to be developed and used for that entire system.

Secretary TAFT. Had they before the act put in any money other than the purchase price of this railway?

Mr. COHN. Nothing in the way of development.

Secretary TAFT. To develop the power?

Mr. COHN. No; it was subsequent to the act that \$125,000 additional was invested, but we claim that a very large portion of the purchase price of the railroad was paid for the purpose of getting these power rights, making the original power rights of the Park and River Railway Company the foundation.

Secretary TAFT. But it lay dormant for about four years, did it?

Mr. COHN. The development lay dormant for about three years, I think—a little over three years. The company at the same time acquired these two bridges across the Niagara River, both of which have the right under their charters to transmit power, to lay cables and conduits to be constructed upon the bridge.

Secretary TAFT. When did they obtain the bridges?

Mr. COHN. They were all bought at the same time, but of course this was a gradual growth. All of these franchises and rights had been acquired with a view of ultimately combining the properties.

Mr. Ely, who appeared before you yesterday, formerly president, but who is no longer connected with the International Railway Company, was counsel for these bridge companies, and he had in his mind, long before the consolidation of these properties, the possibilities of combining them, and these various franchises for the bridges and the right to carry power across them were obtained with a view to ultimately combining all these railroads and putting them into one corporation.

Secretary TAFT. But you wanted those bridges to come over the river, did you not?

Mr. COHN. Oh, for both purposes. The bridges are especially desirable for carrying passengers and cars, more so than they are for

power purposes; but the latter was an incident, and it went to the value of the bridges when they were taken in by the International Railway system.

Secretary TAFT. From the falls you run down to Queenston?

Mr. COHN. Yes, sir.

Secretary TAFT. Do you cross at Queenston?

Mr. COHN. We cross at Queenston.

Secretary TAFT. And then back again?

Mr. COHN. That road is another road. Then the cars are operated on the Niagara Gorge Railroad Company back to Niagara Falls, N. Y.

Secretary TAFT. But then it makes the loop?

Mr. COHN. It makes the loop.

Secretary TAFT. That was one of the advantages of acquiring that property?

Mr. COHN. That was one of the advantages.

Secretary TAFT. And was the only advantage you used for three years?

Mr. COHN. Substantially. Of course that is all subject to explanation, which I can very readily make.

Secretary TAFT. I should think you had better make it. I want to be frank with you. It seems to me your situation is not exactly like that of the other companies that have erected large plants before the passage of the act. You acquired something there which you had for a long time and did not use.

Mr. COHN. For about three years.

Secretary TAFT. You acquired it for other purposes, and you are running a railroad now.

Mr. COHN. Yes; we are in the business of running a railroad, but——

Secretary TAFT. And this adds only to the convenience of your running the road?

Mr. COHN. It adds more than that. It adds to the economy with which the road can be operated.

Secretary TAFT. Yes, it does; but your investment does not depend on that.

Mr. COHN. Not wholly, but to the extent that we have invested money in this power development and in the Niagara Falls Park and River Railway Company for the purpose of acquiring the rights——

Secretary TAFT. But you ran that railroad as a part of your railroad for three years without improving your railroad?

Mr. COHN. That is true. The point about that is this: We had no use for the water power on the Canadian side. There was enough power there to operate that road. The purpose of acquiring the water power was to use it on the American side.

Secretary TAFT. But you had not even begun before this act passed.

Mr. COHN. Very well. I want to explain that, if you will allow me just a minute.

Until the acts of 1901 of Canada and the Province of Ontario we, of course, could not utilize on the American side the power developed on the Canadian side. So until the legislation was obtained it would have been folly for us to invest any money in the power development on the Canadian side so that we could use the power on the American

side. There would be no sense in putting money into further plant on the Canadian side for operating a road which we already had power sufficient to operate.

Secretary TAFT. Then, as I understand it, all you did to work an estoppel, so to speak, against the Government was to obtain the right to use the power on the American side after you had bought the Canadian road?

Mr. COHN. That is true.

Secretary TAFT. And that is all you rest your ground of estoppel on?

Mr. COHN. No; not at all. Further than that, up to 1902, and even later, the American companies were obtaining power under contracts with the Niagara Falls Power Company. Those contracts ran for a definite term.

Secretary TAFT. That was on the American side?

Mr. COHN. On the American side. Until those contracts expired or were about to expire, we could not even use the power on the American side, because we were bound to use power that was taken from the Niagara Falls Power Company, or at least to pay them. So that until those contracts expired it was not worth while either to make any investments in the power on the Canadian side; but immediately after the act was passed in 1901 and the property was legally taken over by the American company, the International Railway Company, the investment began to develop further power, and \$125,000, as Captain Kutz reports, was expended to increase the power development on the Canadian side, the only place where we have any power development.

The power house was reconstructed, additional machinery was put in, the forebay and intake were enlarged and completed, and a development of about 3,600 horsepower was actually completed. That development can be, with the expenditure of a very slight amount of money, without any change in the head, increased to about 8,000 horsepower; that is, by slight enlargement of the wheel pit and the installation of additional machinery. By increasing the head from 68 feet to 136 feet that power development could be increased from 8,000 to 16,000 horsepower, and that would be practically sufficient to run the entire lines of the International Railway Company.

We have not asked here for a permit for the whole amount of power that could be possibly developed from the forebay and intake which have already been constructed. We simply ask now for a permit to transmit such power as may be developed from our present forebay and intake and under the present head, which would be about 8,000 horsepower, less what we are using on the Canadian side, which is about 1,000 horsepower. Captain Kutz reports that to be from 800 to 1,200 horsepower. On average it would amount to not exceeding 1,000 horsepower.

So we have to-day practically 2,600 horsepower running to waste, and a plant in contemplation, which was in contemplation at the time this act went into effect, for increasing that power to 8,000 horsepower by a slight expenditure of money, giving us practically 7,000 horsepower which we could use on the American side.

Captain Kutz has reported that no permit, in his judgment, should be granted at the present time because of an assumed controversy with

the Canadian authorities about our right to transmit the power. I of course do not know the sources of Captain Kutz's information. It is a fact that the plan for the conduit from our powerhouse in the park to our bridge was not approved by the commissioners of the Queen Victoria Niagara Falls Park; but the mere fact that that conduit was not approved does not in my judgment establish a dispute. Our rights, as we are assured by our Canadian counsel, are as clear and as fixed as those of any other company to develop and use this power for the purposes of the International Railway Company, the purchasing company, and that right includes the right to transmit it for their use.

If the commissioners should withhold their approval for our plans for a conduit, it does not prevent us from using the power on the American side, because the power can be transmitted, possibly, in some other manner. We have a pole line along our railroad tracks from the power house to the bridge, and feed wires are carried on that. Some power is carried to this bridge now, where it is connected with wires that go across the bridge to the American side, and power can be transmitted in some degree, at least, through those wires. In fact, I take it that some power must of necessity be transmitted at different times of the day when the character of the load on the American side is such as to draw power to that side. The bridge is lighted on the American side from this power house, and I take it that under that act even the transmission of enough power to light the bridge on the American side would constitute a violation of it.

The situation as it presents itself to us seems like this, that if this report of Captain Kutz is confirmed, and the action recommended by him is taken by you, we are practically foreclosed from going ahead with our development, even under the 68-foot head. There would be no sense or reason, perhaps, in our installing additional machinery to develop the power up to 7,000 horsepower, because we would have no use for it, and all the expenditure we have made in the forebay, intake, tunnel, and tailrace, all of which is of sufficient capacity to develop 8,000 horsepower under the present head, would go for naught, because these permits, whatever may be their effect up to 160,000 horsepower, are the only permits which seem to be desirable. It is said by the members of the International Waterways Commission that the 160,000 horsepower permits are permanent permits. It is said by Captain Kutz that they are permits in the nature of experimental permits to see what an effect such an amount of power development would have upon the falls; but in either event they are valuable permits, the permanent ones, and if permits are granted to others up to the full amount it practically forecloses us from building our present contemplated development, and certainly would foreclose us from deepening our wheel pit and developing the power under the 136-foot head, which would increase by 100 per cent the development.

Secretary TAFT. Just what expenditure do you claim constitutes the basis upon which you are to be allowed any permit at all?

Mr. COHEN. This expenditure we have made in acquiring the Park and River Railway Company—the expenditure we have made in acquiring the bridges for the right, among others—of course not entirely, but partially for the purpose of allowing this power transmission—the expenditure of \$141,000 in this power plant in the last

two or three years to obtain an amount of power which is of no value to us on the Canadian side.

Secretary TAFT. Was not that expended since the act?

Mr. COHN. Not since this Burton Act.

Secretary TAFT. That is what I mean.

Mr. COHN. Oh, no; long before the Burton Act, but since the act on the Canadian side allowing us to use the power on the American side. It was all completed before the Burton Act took effect, or before it was introduced. I think Mr. Stetson can corroborate the fact, because he was at that time a director of the International Railway Company when the power was increased.

Secretary TAFT. I misunderstood you. I understood you to say that your improvement had begun since the Burton Act was passed.

Mr. COHN. Oh, no; not at all. I misunderstood you. When you asked me if it had preceded or succeeded this act, I had in mind the act of the Province of Ontario under which we were allowed to take it into the United States. We have, I think, for upward of two years been trying to obtain an approval of our conduit to carry the transmission wires through the park, and the power development in the power house was completed at about that time, so far as it is now complete, to the extent of 3,600 horsepower. We intended to develop this power, as we would be enabled by the expiration of contracts to use it on the American side and did not care to install machinery and have it practically idle there until we had use for the power on the American side.

The contract for the power in the Niagara Falls district expires on the 31st day of December this year—that is, in Niagara Falls, N. Y. We are to-day obtaining the power to operate the street railway in the city of Niagara Falls from the Niagara Falls Power Company. That contract expires on the 31st of December of this year. We will then be in a position to utilize at least the amount of excess power which we now have in this Canadian power house on the New York side at Niagara Falls, N. Y.; so that we think the permit for 2,500 horsepower should be immediately granted.

On the other hand, we think if this report is approved in the form in which it is it will operate adversely to us in our obtaining approval of our conduit through the park by the Canadian government, and inasmuch as Captain Kutz recommends that permits be granted to the other company for 157,500 horsepower, whereas only 131,000 horsepower is, according to his report, going to be sold in the United States, thereby giving to the other companies 26,500 horsepower more than is going to be sold at the present development in the United States, it occurs to us to be a trifle unfair to hold us down to 2,500 horsepower, which is only about one-third of what we could develop in our present power house, and grant to others permits for power in excess of their present use or present sale or contemplated sale within the United States, because he says: "The total capacity of the generating machinery installed and ordered for the three plants is 171,000 horsepower. The probable demand in the near future from Canadian markets will not exceed 40,000 horsepower, leaving 131,000 horsepower for sale in the United States."

Yet he recommends, in view of the fact that further development is necessary to afford a reasonable return on the money invested, that there be immediately granted to these three larger companies permits

for 157,500 horsepower, and leaves us with only 2,500 horsepower in any event, and that not to be immediately granted. We say the proportion is altogether unfair and unjust to us, and that we should be permitted now to have the right to transmit 2,500 horsepower, and that there should be made a specific reservation for at least 4,500 horsepower additional in case we shall be in a position to make further application for it at an early date.

Inasmuch as your honor has had in your mind, perhaps, that this development of ours has succeeded the passage of the act of Congress, I of course would like you to refer that matter to Captain Kutz or anybody else who is acquainted with the matter to make a report upon that subject.

Secretary TAFT. I will examine into it.

Mr. COHN. Because that development preceded the act by two years. In fact, the development of the Niagara Falls Park and River Railway Company was the first development of power on the Canadian side, and if anyone is entitled to a preference here by reason of priority of development, we certainly are first on the list.

Mr. JOHNSON. Mr. Secretary. Mr. Stetson will take up the time until 11 o'clock, and if you will sit then from 3 to 5 Mr. Cravath and I will attempt to finish within that time.

STATEMENT OF FRANCIS LYNDE STETSON, REPRESENTING THE NIAGARA FALLS POWER COMPANY AND THE CANADIAN NIAGARA POWER COMPANY.

Mr. STETSON. Mr. Secretary, before opening what I have to say upon the other subject, I wish to say something about the International Railway Company.

I was one of the organizers of that railway company, and I think perhaps I know quite as much about the conditions as Mr. Cohn does. As I said in my brief, I had not intended to discuss it, but there are two statements, one of which my friend may not like as much as the other, but I think it should be made. In the first place, Mr. Cohn says that company was the first company to develop power on that side, but that is true only with the qualification that they were limited strictly to development of power for purposes of the railroad. When we bought and organized in 1892 the Canadian Niagara Company, that other contract was in existence, but was strictly limited to the purposes of the Park and River Railroad on that side.

Secretary TAFT. And from Queenston to the falls?

Mr. STETSON. Yes, sir; from Chippewa to Queenston. It was expressly prohibited from using it for any other purpose. That is the fact of the original development. So as Mr. Cohn has repeated this twice, once at Niagara and once here, that they are the pioneers on the Canadian Niagara side, it compels me to call attention to the fact that they were pioneers, but only for the limited and express purpose of operating the railroad. If nothing more than that had occurred, you would have no embarrassment in meeting this question, because there could be no transmission to the United States.

But something else has occurred. In 1901 the International Railway and the Canadian Niagara Company entered into an agreement by which we consented to the relaxation of that prohibition, and took

it off, so from that time it did have a right to transmit to this side for its own purposes only—not for any other purpose, but for its own purpose.

About that time—and that is a very important thing which Mr. Cohn has not stated—the power house burnt down. They lost all their power, and in the reconstruction of that power house, in 1901, it was deemed wise, for then I was one of the directors of the company, to enlarge the wheel pit and to make the larger provision, which, as Mr. Cohn says, now exists, and that provision was made and completed entirely prior to the Burton Act or any thought of the Burton Act—years before.

To the extent of the money that was invested in that enlargement, there is the ground of estoppel. I do not agree with my friend, Mr. Cohn, that the original purchase of the Park and River Railroad had any relation to it. We bought the railroad without the right of transmission, and we paid our money without such right. I know what I am speaking about, because I was in the transaction. Mr. Ely may have had that in his heart, but he never communicated it to his associates until long after. I know what I am speaking of here.

But I think their claim is enough. The expenditure that was made in good faith in the year 1901 for the purpose of enlarging that wheel pit for its transmission is just as good, for the purpose of estoppel, as though it were the whole amount of the original purchase.

Secretary TAFT. How much did it amount to?

Mr. STETSON. I think it was some four or five hundred thousand dollars, was it not, Mr. Cohn? I do not know the figures.

Mr. COHN. The purchase price is stated in the transfer to the International Railway Company—

Secretary TAFT. I mean the reconstruction.

Mr. COHN. That I do not know.

Mr. STETSON. I think it was some four or five hundred thousand dollars. It was a great deal more than it ought to have been. I know that.

Mr. COHN. The total reconstruction?

Mr. STETSON. No; the additional power. It was a great deal more than it ought to have been. It was a very wasteful construction, though I was in part responsible for it. But there was, in good faith, a large amount paid there on the idea that that power could be used for the operation of the railway on the American side. The limitation as to the Canadian side being waived, but the limitation as to its use for a railway never having been waived, there is no right to use it for any other purpose than a railway, under our agreement.

Mr. COHN. There is no claim or disposition on the part of the company to use this power or sell it for any other purpose than its railway, but, as from time to time contracts with Mr. Stetson's company expire, it would be extremely advantageous to us to have this power which we are developing ourselves, instead of paying Mr. Stetson's company a large sum for it. Captain Kutz states in his report that the transmission of the 2,500 horsepower to the United States would result in an estimated saving of \$30,000 a year. That is \$12 a horsepower, and seems to us to be a very low figure.

We do not buy any at \$12 per horsepower per annum, and if the

full amount of 7,000 horsepower under the present head could be had on the same basis, it would result in a saving to this company of \$84,000 a year. I do not know whether it was ever in Mr. Stetson's mind or not that the power rights of the Niagara Falls Park and River Railway Company were a valuable part of that railroad, but I do not think there was anything about the railroad in 1899 that had any attraction in and of itself. It was not a paying proposition. It was being operated certainly at no profit to those who owned it at that time, and if it were not for the power rights——

Secretary TAFT. But it made the loop.

Mr. COHN. It helped to make the loop.

Secretary TAFT. You did not buy the bridges, and what you bought did not give you the right to come across.

Mr. COHN. No; not at that time. That is true, but if those who purchased had in mind that if they purchased and under the rights obtained they could take the power across, it probably formed a valuable part of it.

Secretary TAFT. What you, in your fancy, look forward to is a very slim matter for an estoppel.

Mr. STETSON. Mr. Secretary, I say distinctly it was not in mind, for I know what was in mind. I raised the money myself. I made contracts over on the Canadian side, not Mr. Ely. I know we bought it with the idea that we were not going to loose the business of the whole International Railway Company as a customer of the power company, and, of course, at the time we bought the railroad, which we would have for our largest customer, we were not also building up a rival. Mr. Cohn may speak at second hand. I am speaking of what I know first hand.

Mr. COHN. I suppose those who participated in it may have all had different views?

Mr. STETSON. No; we did not. We communicated with one another. If Mr. Ely were here we would not have this discussion.

Mr. COHN. However, we have the power house there, and it is of no value unless we get this permit. We are in a position to develop 4,000 more horsepower, with a very slight additional expenditure, all of which will be of no value to us unless we can secure a permit to utilize the power on the American side. The money was expended before the passage of the Burton bill.

Secretary TAFT. Perhaps you will want to build a Canadian railway?

Mr. COHN. I do not think our experience in Canadian railways would justify us in spending any more money over there. The profitable part of the railway system is, of course, in the large cities of Buffalo and Niagara Falls, and not along the borders of the Niagara River.

Mr. STETSON. I do not contest the latter part of Mr. Cohn's statement at all. I think it is a generally proper basis for all he is claiming. I am not saying anything about that, but the basis is the expenditure in the reconstruction of that work in 1901, and has no relation whatever to the original purchase. Indeed, the development of power at that time would have been contrary to the original purpose, because it was bought by us for the Niagara Falls Power Company. As I say, we were not intending to build up a rival. We were intending to build up a customer.

Mr. Secretary, yesterday I concluded what I had to say upon the general subject, and I omitted that portion of my brief which begins at page 17, referring to the prior and preferential right of the Canadian Niagara Company.

I do not intend to take much time this morning in the discussion of this question. I shall ask the privilege, after we come together this afternoon, of a little time to reply to my friends; but I think we can save a little time by laying before your honor the basis of our contention.

At page 29 you will find Appendix A, which states the legal propositions, and I would like to turn to that first as stating the history.

The Canadian Niagara Company is, and always has been, recognized by the Queen Victoria Niagara Falls Park commissioners as the "pioneer company." (19th report, pp. 12-13; 18th report, p. 5.)

The first contract between this company and the commissioners was made April 7, 1892 (16th report, p. 14); the modifying contract July 15, 1899 (14th report, p. 11).

Clause 11 of the modifying contract (p. 17) provides that if from any cause the supply of water at the point of intake should be diminished the company should have no claim or right of action against the commissioners, "nor give to the company" (that is ourselves) "any right of action against other licensees or grantees of the commissioners"—there were none at that time; this had a prospective view—"in respect of any diminution not substantially interfering with the supply necessary for the company."

Therefore our contention is that a substantial interference by any subsequent license was limited and forbidden by that act, and would give to us a right of action and claim against those subsequent licensees. Those two subsequent licensees are here, the Ontario Power Company and the Electrical Development Company.

The subordinating effect of this clause has been forced upon the recognition of each of the junior lessees (for we are all lessees alike under the park commission). Under this contract the Canadian Niagara Company began its work May 31, 1901 (16th report, pp. 5-11), before either of the other companies had even acquired a right to their present works and long before such works were begun.

We had begun our work before either company had acquired a right to their present location and long before their works were begun.

Now we come to the other two companies.

The Ontario Power Company entered into its first contract with the commissioners, that concerning the waters of the Welland River—April 11, 1900 (14th report, p. 25; 16th report, p. 3; 19th report, p. 11), and its second contract—that concerning the Niagara River—and its present and only constructed works, August 15, 1901 (16th report, p. 19).

I call your attention there to the proposition; originally they were not intending to use the waters of the Niagara River at all. They had got an ingenious scheme for taking the waters of the Welland River above Chippewa and discharging them down into the Niagara River above the Niagara Falls—that is, it would have been a Welland River development and not a Niagara River development and would have had no effect whatever upon the falls of Niagara. That was

the original scheme which was referred to, and they call it their first development.

Secretary TART. Would there not be a good deal of fall there?

Mr. STETSON. There would be some fall. That also would be prohibited under the act of Congress if that act were applicable on the Canadian side, because the Welland River is one of the tributaries of the Niagara River. I do not think these gentlemen should be limited in any way in the development of that Welland right, for it has no effect upon the Niagara Falls at all, and I recognize the full right they have there to continue that, and that is what they are paying for.

The reason, as I started to say, why they pay twice as much as the rest of us is that they have two rights. They have the Welland River right, for which they pay \$15,000, and they have the Niagara River right, for which they pay \$15,000 a year. We all stand alike as to our rights in the Niagara River. We pay as much as they do as an initial rent, because they have this additional right in the Welland River. You will observe that even the Welland River right succeeded and was posterior to our contract right of July 15, 1899, though it was anterior to the actual beginning of our work, which was in 1901. Their Niagara River right, which accrued August 15, 1901, was subsequent to the beginning of our work on May 31, 1901.

So, in every respect, they are subsequent to us, and how subsequent will be shown as I refer to the terms of the Ontario Company's contract.

The rights of the Ontario Company were expressly subordinated to those of the Canadian Niagara Company by clauses 7 and 8 of the second Ontario contract, which were as follows (16th report, p. 21):

7. Provided that the works on the premises delineated on the plan hereto annexed shall not interfere with or deprive the Canadian Niagara Power Company of the right to construct, operate, and maintain the underground tunnel leading the waters of the Niagara River from the power houses and wheel pits which they are about to erect and develop in pursuance of the several agreements entered into between the commissioners of the Queen Victoria Niagara Falls Park [herein styled the commissioners] bearing date 7th April, 1892, 15th July, 1899, and 19th June, 1901.

8. And the company [that is, the Ontario Company] shall indemnify the commissioners from all claims or demands by any person or persons whomsoever, whether arising by reason of the exercise by the company of the powers, rights, or authorities or any of them conferred by the hereinbefore-recited acts of the parliament of Canada, or either of them, or by reason of anything done by the company in the exercise thereof affecting any property, rights, or privileges heretofore by the commissioners granted to or conferred upon any person or persons whomsoever, or enjoyed, used, and exercised by any such person or persons under the commissioners, it being the intention of this agreement that should the company [that is, the Ontario Company] in the exercise of the aforesaid powers, rights, and authorities so affect any such property, right, or privileges granted by or enjoyed under the commissioners [that is, our property], the company shall fully indemnify the commissioners in respect thereof.

The Ontario Company did no work upon its present plan prior to December 31, 1901 (16th report, p. 4), but began such work shortly after the delivery of the third agreement, dated June 28, 1902, which was not validated until August 7, 1902 (17th report, p. 12), after the Canadian Niagara Company had spent and incurred more than \$1,500,000 upon its entire plans for the full development of 100,000 electrical horsepower (17th report, p. 50).

That should not be 100,000 horsepower. It should be 121,000, although in the report it was called 100,000. We were proceeding on the basis of what the installation would produce.

I come now to the Toronto and Niagara Power Company, represented by Mr. Macrae and Mr. Johnson.

The Electrical Development Company (Toronto and Niagara Power Company), through its promoting syndicate, made its first agreement with the commissioners January 29, 1903 (17th report, p. 30), long after the vesting of the rights of and after the beginning of actual work by each of the other two companies, whose priority, as in the Ontario contract also, was expressly recognized by the Commissioners (17th report, pp. 12-13).

The rights of this Toronto syndicate were expressly subordinated to those of the Ontario Company (17th report, p. 32, clause 5).

There can be no conflict, in my judgment, between Mr. Macrae's company and the Ontario Company, because there is there the utmost precision of statement—"and of all prior grantees," including, of course, the Canadian Niagara Company (17th report, p. 37, clause 17; see also 17th report, p. 41, clause 5).

The syndicate was required to deposit \$25,000 as a guaranty against injury to works of the Canadian Niagara Company or of the International Railway by diversion or diminution of the current (19th report, pp. 16-19; 20th report, p. 16). The prior rights of these earlier grantees were also expressly recognized in a further agreement dated January 9, 1905, between the Electrical Development Company and the commissioners (19th report, p. 30, clause 3), which, however, failed of legislative ratification.

They had made an application and got from the commissioners the right to another 100,000 horsepower, which was repudiated and failed of ratification by the provincial assembly of Ontario, and in that agreement, which is printed in the report, there is the very fullest recognition of our precedent rights.

In their memorandum of argument, submitted in December, 1902, before the Canadian commissioners (17th report, pp. 51-52), Sir Christopher Robinson and Mr. Macrae, the counsel for the Toronto Company, made the following statement: "If the Canadian Niagara Power Company can demonstrate that the taking of water in the manner proposed by the applicant will cause physical injury of a substantial kind to their licensed works, the government would be justified in refusing the applicants permission; but the burden of establishing this injury rests upon that company."

This necessary admission as to the immunity of the physical structures of the Canadian Company from injury through the establishment of the works of the Toronto Company, by necessary implication concedes also the immunity of the Canadian Company in the operation of its works from depreciation or diminution of its granted rights in order to enable the Toronto Company to operate its junior works to their full extent.

In other words, the undoubted right of the Toronto company under its agreement of January 29, 1903, to use the Canadian reservation waters therein granted, is a right to take such waters only to the extent that they are available after the prior grants of the commissioners shall have been fully satisfied. This priority of right entitles the prior licensees to preferential consideration according to their priorities whenever and wherever conflict in respect thereof may arise among the several licensees. Certainly it should not be overlooked in

the present discussion, which is to be concluded upon a full recognition of all the equities of all the parties.

I see it is nearly 11 o'clock, and I had better suspend, I suppose, and come back to the other part afterwards.

The SECRETARY. Just as you will. You may do that if it is more convenient, because when I begin at 3 o'clock I can sit until we get through.

Mr. STETSON. I thought that might save your time.

The SECRETARY. Then we will take a recess until 3 o'clock.

A recess was thereupon, at 10.55 o'clock a. m., taken until 3 o'clock p. m.

AFTER RECESS.

The hearing was resumed at the expiration of the recess.

STATEMENT (CONTINUED) OF FRANCIS LYNDE STETSON.

Mr. STETSON. Mr. Secretary, I wish not to correct, but, perhaps, to explain, a statement I made this morning with reference to the rights of the Ontario Power Company in the Welland River. When I spoke of their right to take from the Welland River, without any water from the Niagara River, I was referring to that which was their right under the Dominion charter, that was granted away back in 1887. Under that charter they might have taken water from the Welland Canal, but they were expressly limited so that they could not go through the Queen Victoria Niagara Falls Park without permission from the commissioners, and until they got permission to go through the Queen Victoria Niagara Falls Park, which was not given until 1899, they could take no water from the Niagara River excepting by taking it around away on the outside of the park, which would have been at a prohibitive cost. They would have had to go from Chipewewa around outside of the park to the lower river.

I have given you the facts in the appendix. I will now ask a few minutes only to speak of the deductions which I would make from those facts.

In their report the American commissioners say that Captain Kutz concludes "that there is no sufficient reason for discrimination between the Canadian companies except their relative ability to command the Canadian market."

In reaching this conclusion, Captain Kutz, as a layman, naturally enough has failed to take into account the consideration to which in equity our Canadian company is entitled as the prior appropriator and licensee of the water. We annex an appendix, "A," showing that at all times our prior and superior rights have been recognized by the Queen Victoria Niagara Falls Park commission, and perforce by each of the other companies now claiming their subordinate rights.

I do not for a moment pretend that there is any legal claim here that compels your judgment. I am merely endeavoring to establish two propositions: First, that if the commissioners of the Queen Victoria Niagara Falls Park, representing the provincial authorities, under whom we claim, were considering this question they would, in my judgment, give us this priority. I think that is something in

equity that is entitled to consideration from you in determining how the suffering must be distributed, if we have to suffer.

Under the established rules concerning water courses and riparian rights, if by a physical convulsion the waters of the upper Niagara River were to be carried into the American channel so as to leave available for use on the Canadian side only 100,000 horsepower—

When I use that term it means 121,000, or whatever our rights are. It was easier to deal with—

our company in equity would be entitled to the whole of that power though the two junior lessees were to go dry. Correspondingly, if by the act of law flow of the river available for power transmission to the United States is to be reduced to 160,000 horsepower, then our juniors should first suffer reduction for this purpose to 60,000 horsepower, for they are not entitled to consideration to the detriment of our prior right to 100,000 horsepower for any and all purposes. The three successive rights of the three principal lessees must in equity be reduced if at all in the inverse order of alienation by the Canadian authorities. I make no reference to the International Railway Company, whose rights we do not discuss.

Another ground upon which we base our claim to preferential consideration is the comprehensive purpose of the act of Congress of June 29, 1906. The object of this act is to preserve Niagara Falls in their entirety—not the Canadian Falls alone, nor the American Falls alone, but the entire natural wonder—for the gratification not of Canada alone, nor of America alone, but for all mankind.

With this generous purpose I heartily sympathize, provided that it shall be accomplished, as it can be accomplished, with a just regard to honest rights in the order of their priorities. In this comprehensive view of the subject it is to be considered that the two companies now represented by me are substantially one, and that their developments have been and are mutually interdependent. For this reason we have not resorted to the semblance of a contract between them.

We could draw between these two companies contracts similar to those that anybody else could execute and could bring them here; but that would be only a pretense between the two companies, which are one just as much as the possibilities of two different corporations can permit.

Thus considered, it will become evident that the Niagara Falls Power Company is suffering more than any other company, for it has been forbidden to proceed under its charter right to construct in New York a second tunnel for 100,000 horsepower, for which it has acquired its right of way and made large expenditures. It is also hindered from proceeding under the charter right of the Canadian Niagara Company to complete the second half of its wheel pit, already excavated, for the erection of six 11,000 electrical horsepower turbines and dynamos. As the greatest sufferers we submit that nothing should be conceded to our juniors because of their lesser and inferior deprivations.

The Ontario company's position.—The Ontario Power Company in its printed memorandum has submitted certain claims for special consideration, to which, in our view, it is not entitled.

(a) The claim of the Ontario company that it uses the water more economically than any other company is not accepted by Captain

Kutz (p. 13, clause 27). It may not be irrelevant also to suggest that as this economy is due to the construction of a power house directly and conspicuously in front of the Falls, it is unlikely to be regarded as a merit by those who are seeking to protect and preserve the scenic grandeur of Niagara. The construction of this power house directly in Niagara Gorge was the subject of timely and vigorous protest by Mr. Andrew H. Greene and his associate commissioners to the Canadian commissioners, as fully considered in their seventeenth report at page 9. And I would like to ask the Secretary if he wishes to have these reports left.

Secretary TART. Yes; I should like to see them.

Mr. STETSON. I will leave them.

(b) The suggestion that the Ontario company is entitled to special consideration because it is paying twice as much rent as any other company is incomplete. It should have been added that for each of its grants each of the three Canadian companies pays the same initial rent of \$15,000. The Ontario company has two grants, of which one is upon the Welland River, which it does not now choose to use, but which it is at liberty to use. After the rents covering 40,000 electrical horsepower, each of the three companies is to pay exactly the same rent for all of its power. Upon the sale of 40,000 electrical horsepower two of the companies will pay \$37,500 and the Ontario company will pay \$47,500. As the Ontario company asserts that it has contracted to sell more than 40,000 horsepower it would seem as though now its rental will not be materially more than that of the other two companies. That is, there would be that excess of 100,000 after they reached 40,000 above the rest of us, but that is because they have an extra power conceded.

If the amount of rental is of consequence, the Canadian Niagara Company, which has been paying rent since 1892—eight years longer than any other company—clearly is specially entitled to consideration. These payments, up to 1906, are shown as follows by the commissioners' reports (19th, p. 11; 20th, p. 16):

Canadian Niagara Company	\$239, 577. 73
Ontario Power Company	140, 000. 00
Electrical Development Company	37, 500. 00

Mr. GREEN. What date was that?

Mr. STETSON. That was including last year—not 1906. These are just what is shown in the report.

Mr. GREEN. 1905.

Mr. STETSON. 1905. I recognize that you have gone on and paid your rent since, but that is the last printed report I had, and the last that was issued, I think.

(c) The plant investment in August, 1906, of the Ontario company proper (\$5,542,000) is not greater, but is less than that of the Canadian Niagara Company (\$6,250,000). (See Captain Kutz's report, p. 7, clause 7; p. 10, clause 16.)

The additional expenditures by the Ontario company's customer, the Niagara, Lockport and Ontario Company, are insignificant compared with those of the Canadian Niagara Company's principal, the Niagara Falls Power Company, and its subsidiary companies in Niagara, Tonawanda, and Buffalo, with their four transmission lines, and the many customers, all exhibited to Captain Kutz.

He had a list of every customer. They were gone over by him and by Mr. Faust, the most able and competent representative of the Attorney-General, and our position there can not be contested.

The actual investment on the faith of this development of the Canadian Niagara Company has been and is more than that of all the other Canadian companies and their subsidiary companies combined, in addition to having the great element that we put all of this capital at risk before any of our friends followed us.

The prospect of service rendered or to be rendered by the Ontario transmission line is highly colored by hope, as shown by the cold facts arrayed by Captain Kutz in section 10 of his report.

Proceeding from a present actual delivery of 700 horsepower and a present firm contract for only 14,240 horsepower, the Ontario company deludes itself into the plea that it is to be considered on the basis of an actual contract for 90,000 horsepower, if not for 180,000 horsepower.

The statement of the Ontario company calls attention to the fact as to how great a territory they serve as compared with ours, and how many people live in it. The question is not How many people live in the territory, but How many users of power are likely to live there.

It is notorious that power is used not in sparsely-settled country districts but in centers of population.

The Ontario transmission line runs through 150 miles of rural territory to reach Syracuse, a city with less than one-third of the population and with only thirty-four one hundred and seventy-seconds of the manufactured products of Buffalo, to which with its contiguous outlying districts the Niagara Falls Power Company now is actually supplying 40,000 horsepower with a demand for 5,000 more.

As may be seen by reference to Census Bulletin 57 already quoted, the value of manufactured products in 1905 was as follows:

Buffalo -----	\$172, 115, 100	
Niagara -----	16, 915, 786	
		\$189, 030, 886
Rochester -----	82, 747, 370	
Syracuse -----	34, 823, 751	
Lockport -----	5, 807, 908	
		123, 378, 959
Total -----		312, 409, 845

The lighting and transportation requirements keep pace with the manufacturing conditions.

We respectfully invite the Ontario company to show exactly how much power it is actually supplying in Syracuse or elsewhere, and also how much power it is bound to supply there or elsewhere to any customer other than its subsidiary transmission company, i. e., itself.

Upon this point of actual delivery of power, it may be well now to exhibit somewhat more clearly than heretofore the necessities of our two combined companies, the Niagara Falls Power Company and the Canadian Niagara Company.

To the amount of 85,000 horsepower, stated on pages 8 and 14, of the brief of the Niagara, Lockport and Ontario Company and on page 2 of the brief of the Ontario company, and stated also on page 11, paragraph 20, in Captain Kutz's report, as the electrical load of the "combined companies" (the Niagara Falls Power Company and Canadian Niagara Power Company) must be added, approx-

imately, 8,500 horsepower, the amount of the Niagara Falls Power Company's hydraulic load delivered to the International Paper Company and not converted into the form of electricity.

That has escaped attention. It did not escape General Ernst's attention, but in Captain Kutz's report it is not referred to, at all events, and has to be added to the electrical load.

As a matter of fact Captain Kutz somewhat underestimated the maximum electrical load of the combined companies. During the winter of 1905-6 it was substantially 90,000 electrical horsepower. Adding 8,500 horsepower, hydraulic, we have at that time a combined load closely approximating 100,000 horsepower.

With adequate provision for reserve and for necessary repairs in practice and under present conditions, the American electrical plant working to its capacity can not be relied upon for 85,000 horsepower.

The printed statement made by the Niagara Falls Power Company, and submitted to Captain Kutz under date of July 27, 1906, gives the power contracts of that company in detail, and shows an aggregate of 167,740 horsepower subject to call thereunder on the American side. The originals of these contracts also were all submitted to Captain Kutz, and those for larger amounts of power were gone over in detail by him and by his associate, Mr. Faust, of the Department of Justice. The printed statement of the same (Niagara Falls Power) company to the Secretary of War, dated July 3, 1906, gives the amount called or in use under each of these contracts.

This amount then aggregated 102,550 electrical horsepower. Since that time several power consumers have increased or called for additional power in a considerable amount, notably the Niagara Electro-Chemical Company, which now is installing additional electrical apparatus to use up to a maximum of 4,500 horsepower: the Pittsburgh Reduction Company, to use up to a maximum of approximately 10,000 horsepower, and the Union Carbide Company up to 25,000 horsepower. The Cataract Power and Conduit Company, the Buffalo distributing agent of the combined companies, already, during the present month, has called upon our combined companies to provide at their power houses a maximum which, with the Tonawanda demand, will call for 40,000 electrical horsepower, and during the month of December will require provision, at the power plants, of not less than 5,000 electrical horsepower in addition to the amount last mentioned.

Secretary TAFT. I thought that the Pittsburgh Reduction Company was the patron of the Schoelkopf company?

Mr. STETSON. It is the tenant both of the Schoelkopf company and of the Niagara Falls Power Company. The Pittsburgh Reduction Company is the company working out the patent of Mr. Hall and Mr. Davis, making aluminum. That is probably the most important use of electricity that has ever been developed. If Niagara Falls had never done anything else, it would have been worth all it cost in the application of this wonderful patent of Mr. Hall in bringing that which was almost within the range of semiprecious metal down to the range of competition with copper, so that we use these aluminum lines for transmission from Niagara to Buffalo on the American side, and we have put in another on the Canadian side. Lord Kelvin said there was only one thing that would prevent the revolution of the

world by electricity, and that was that there was not enough copper to carry it. Aluminum has been developed out of the dust of the earth, in quantities that never can be exhausted: and I say that alone—that wonderful invention of Mr. Hall, supplied under the wise supervision of Mr. Davis—would in itself be a blessing to mankind such as can not be overestimated, even if there had been some apparent diminution in the volume of Niagara, as there has not been.

The amount of 25,000 electrical horsepower which the Canadian Niagara Company is transmitting under the provisions of its temporary permit has been barely sufficient to supply the pressing demands of the present use of our combined companies. Except that for the fact that on account of unexpected difficulties in construction and in crossing certain properties with its cables the Canadian company was delayed, the entire amount of the present temporary permit already would have been used in Buffalo alone, in which case the American company would not have been able to supply the present enlarged demand on its own lands in the city of Niagara Falls, N. Y. I make a concession here which I should not have made. I looked back upon my statement before your honor in July and I found I did state our application was for 121,000 horsepower. It is printed there. Still, I will go on.

It is true, as stated in the memorandum of the Niagara, Lockport and Ontario Company (p. 4), that our original application for 121,000 horsepower is for an amount which, in the opinion of Captain Kutz, exceeds by 500 horsepower the present capacity of the plant, which he states (p. 10) "where designed for the production of 121,000 horsepower;" that is, eleven units each of a capacity of 11,000 horsepower. His deduction of one of the units as a spare, so as to put the company on the same basis with the other two Canadian companies, disregards the fact that in the case of our company reserve will be provided by the Niagara Falls Power Company on the American side; and therefore our original application should have been not for 120,500 horsepower, but for 121,000 horsepower, which, as stated in Captain Kutz's report, is the ultimate full capacity of our Canadian plant.

When the installation of the electrical machinery above referred to is completed, the combined companies, at times of maximum load, will require the entire available output of both the American and Canadian plants in order to supply the power demands now under contract.

To the separate claims of the two transmission companies, the Niagara, Lockport and Ontario Company and the Niagara Falls Electrical Transmission Company, we consider it unnecessary to make separate reply, for their claims are merely in support of their several principal companies in Canada.

With reference to the Niagara Falls Electrical Transmission Company, it does not appear that it is legally authorized "both for diversion and transmission," so as to come within the scope of the second section of the act.

That language is a little vague, but it seems to say that your permits for transmission can be given to companies that are authorized only both for diversion and transmission.

The claim of the Electrical Development Company for equality of treatment does not seem to us unreasonable if disposed upon the basis of priority of the three companies in the order of their establishment.

In other words, we would not deny that in fairness each of the three companies should be permitted to transmit to the extent of its capacity as developed or really in course of bona fide development prior to Congressional action. But if it shall become necessary to limit the exercise of these rights, then equitably the discrimination should be inversely in the order of priority.

That concludes what I have to say in the way of argument. I have one statement to make, and then I will sit down.

We wish, of course, to preserve this point as to the order of priority. We do not wish in any way to yield it. We believe in it, and we respectfully insist upon it; but we recognize the difficulties of the situation. We recognize that all of the people have been subjected to disappointments, and if this can be done without prejudice to our rights pending the formulation of a treaty which may come, we, as a *modus vivendi*, will consent to one equal division between the three; that is, we would consent to a diminution of ours to give it to the Electrical Development Company on the ground of the division among the three, which, I think, all things taken, would be the fair thing.

Secretary TAFT. Let me understand you, Mr. Stetson. You mean you would take 60,000, or whatever it is?

Mr. STETSON. Less 7,500. We would take 52,500 and throw off 7,500, and let the other people do that, and add that to the Electrical Development Company. We will consent to that as a *modus vivendi*, only reserving our right that that remainder should be divided equally between the three companies until something further shall be done.

I think Captain Kutz was right in the amounts he gave us, if he disregarded priorities. I have no criticism to make of Captain Kutz's position. I am merely making this as a concession for the purpose of getting this out of your way, if we can do so.

Secretary TAFT. Is Mr. Alexander J. Porter a member of the New York State Reservation?

Mr. STETSON. Yes, sir.

Secretary TAFT. I have a telegram from him, as follows:

In order that my personal position may not be misunderstood, I beg to advise you that the appearance of Judge Potter at yesterday's hearing was absolutely without my knowledge, and does not convey any opinion from me as a commissioner of the State reservation.

ALEXANDER J. PORTER.

I suppose he is rather represented by Mr. Ely than by Judge Potter. I suppose that is what it means.

Mr. STETSON. As Mr. Porter was one of the original incorporators of the Niagara Falls Power Company, and as Judge Potter has been its counsel for most of the time, I do not know what variety of interest is represented by them.

STATEMENT OF GEN. FRANCIS V. GREENE, REPRESENTING THE ONTARIO POWER COMPANY OF NIAGARA FALLS.

Mr. GREENE. Mr. Secretary, I do not know whether you have seen our brief yet.

Secretary TAFT. No, sir.

Mr. GREENE. I have it here, but I shall not follow it. You may or may not know that I used to be an engineer officer when I was young.

Secretary TAFT. I know that.

Mr. GREENE. I always had a great fondness for maps. Here is a set just off the press yesterday. I will hand one to you, Mr. Secretary, and I will give the other copy to Mr. Stetson. I am very sorry there was not a third copy to give to Mr. Macrae, but I will take great pleasure in sending him the next one that comes off the press. There will be several thousand of them printed, but I got these out in advance.

Mr. Secretary, again regretting that the illness of our senior counsel, Mr. Locke, makes it necessary that the Ontario Power Company should be represented by a layman, in competition with the leaders of the bar of Philadelphia and New York, representing our rivals and competitors, I have this to say on behalf of that company:

At the close of the hearing yesterday you stated that the discussion to-day would be on the question of the division among the respective claimants of the amount of power which, under the discretion vested in you by this act, you may decide to allow by permit to be transmitted into the United States, and for the purposes of argument Captain Kutz's report was to be taken as the basis for discussion.

First, as to the International Railway Company.—We respectfully submit that they are in an entirely different category from the three large power companies, because at the present time they have no right to take the power from their power house out of the park for transmission into the United States.

Secretary TAFT. Do you mean that depends upon the grant of the park commissioners?

Mr. GREENE. The commission refused to allow it.

Secretary TAFT. On what ground?

Mr. GREENE. On the ground that their charter does not permit it. The commissioners dispute the contention of the railway company in regard to their amended charter.

Their power house is situated within the limits of the Queen Victoria Niagara Falls Park, which is subject to the jurisdiction of the commissioners of that park, and at the present time as well as at the time the Burton bill was passed the commissioners have and had refused to grant permission to the International Railway Company to take any power from their power house through the park for use in the United States.

Whatever rights this company may have under its amended charter these rights are inchoate and incomplete because the commissioners refuse to recognize them. When this matter came up nearly three years ago and the International Railway Company filed its application for permission to take power out of the park for the use of its railways in the United States, we filed a protest against such permission being granted to them and supported this by argument of counsel. After due consideration, and chiefly because at that time there was no restriction or hint of any restriction on the transmission of power from Canada into the United States, we withdrew our protest and formally notified the International Railway Company thereof. Now, with the transmission of power restricted to an amount far below the requirements of the three power companies the situation is entirely different and we are compelled to enter our

protest against any permit being granted to the International Railway Company to bring power into the United States.

Captain Kutz, on page 11 of this report, says as follows: "With the machinery now installed, 3,600 electrical horsepower can be generated. * * * Its use is limited to the operation and lighting the railway, the Canadian division of which now uses 800 to 1,000 horsepower. The company claims the right to transmit the balance to the United States for use on that portion of its system. This right, however, is questioned by the commissioners of the Queen Victoria Niagara Falls Park, and in their annual report for 1905 they say that they can not see their way clear to approve the plans for the transmission of this power through the park."

Of course if the plans are not approved the railway company can do nothing.

This morning the attorney for the railway company stated that he did not know where Captain Kutz got his information. This is a surprising statement, because Captain Kutz says distinctly that he got it from the official report of the commissioners of the park for the year 1905. I may add that in conversation with the commissioners within the last few months they have stated to me positively that their views in the matter are unchanged, and on the advice of their counsel they do not intend to grant the permission sought. Whether they will be overruled by judicial decision is of course a matter of conjecture, but the point I wish to make is that at the time of the passing of the Burton Act, and at the present moment, the railway company has no right, clear and undisputed, as the power companies have, to take power from their power house through the park for use in the United States.

If you do not agree with these views, and if you accept Captain Kutz's recommendation that a portion of the power to be transmitted into the United States be reserved until the rights of the railway company have been judiciously determined, then I wish to call your attention to the statements made by the attorney for the railway company this morning and not disputed by Mr. Stetson, that the railway company is now buying its power in the United States from Mr. Stetson's company; that one of its contracts expires at an early date and others at a later date, and that the railway company, if it receives a permit to transmit power into the United States, intends to use such power solely in replacement of the power now purchased from Mr. Stetson's company as the contracts for the same expire.

Therefore, if the railway company brings any power into the United States, it sets free an equal amount of power from Mr. Stetson's company, and we ask that if any permission is granted to the railway company it shall be determined from the amount of power allotted to Mr. Stetson's company.

MR. STETSON. That is, if we do not continue to sell it, we must lose it.

MR. GREENE. If they can bring power to supplement power which you now have, it should be taken away from you.

MR. STETSON. We are not connected with them. They are one of our customers.

MR. GREENE. I submit that for your consideration, Mr. Secretary. I think it is well founded.

Second, as to the Electrical Development Company.—The contention of this company and its subsidiary company, the Niagara Falls Electrical Transportation Company, of which it owns all the stock, in the brief submitted November 1, is, in substance, that the three companies are on an equality, and "that there should be equal treatment accorded to them all." We can not understand on what ground such an argument can be used. As well might it be claimed that three locomotives weighing 180 tons, 125 tons, and 110 tons should be considered equal in power. The fore bays of the three companies are finished: Ours for 180,000 horsepower, the Electrical Development Company for 125,000 horsepower, and the Canadian Niagara Company for 110,000 horsepower. Each of these fore bays probably has a greater capacity than the figures stated by from 10 to 20 per cent, but their relative proportions are as the figures stated, and they were constructed on plans approved in each case by the park commissioners with the intention of producing power in the relative amounts I have named. Under its franchise the Electrical Development Company is expressly limited to enough water to produce 125,000 horsepower.

And I may add that they attempted to get this increased last year. The park commissioners agreed to it, but the government of Ontario absolutely and positively refused it.

There is no such limitation in either of the other franchises, but the limitation at the time the Burton bill was passed and at the present moment is that fixed by the plans hitherto approved, and these plans are for 180,000 horsepower, 125,000 horsepower, and 110,000 horsepower. That was the status at the time the Burton bill passed, and I can not see how any argument can be produced to sustain the contention that power plants of such relative size should be considered as equal in size.

The Electrical Development Company in their brief have seen fit to include newspaper clippings concerning an interview which I had with Premier Whitney in Toronto about six weeks ago, and in that brief they say: "It is common report in Ontario that the Government is about to close a contract with the Ontario Power Company."

As to this I hope their information is correct. Mr. Macrae, but we have no assurance of it, and it would seem as if with a transmission line all built to Toronto, and I believe just about ready to deliver power, or possibly already delivering power in that city, they would have a better chance of success in competition for the business in Toronto than ourselves.

Captain Kutz was evidently of that opinion, for he calls attention to the fact that they have expended \$2,620,000 for a transmission line in Canada, none of which is intended to reach the Niagara River for the purpose of crossing into the United States; whereas the investment of the other two companies for transmission lines in Canada, exclusive of what they have spent to reach the frontier, is insignificant. On page 14 of his report Captain Kutz says: "The Electrical Development Company is preparing to sell between 30,000 and 40,000 horsepower in Canada;" and these are definite, distinct plans, based on contracts which are matters of public notoriety, under which the Electrical Development Company or its allied transmission company has positively engaged to sell and deliver power in Toronto for the operation of the entire street

railway system and the Electric Lighting and Power Company of that city.

To fulfill these contracts it has built at the large expense of \$2,620,000, above referred to, a transmission line 80 miles or more in length from its generating plant on the Niagara River to the city of Toronto, and this transmission line is either now delivering power or about to deliver it in Toronto. This is a definite, fixed engagement, and to that extent, as correctly stated and argued by Captain Kutz, the Electrical Development Company has a certain market for the sale of power in Canada, whereas the other two companies, except for such small amounts as they may have sold on the Canadian side in the vicinity of Niagara Falls, have no definite engagements, and are simply competing for the business against a great handicap of a completed transmission line with fixed contracts for the delivery of power at the extreme end of it. It seems to us, therefore, in every respect equitable that as this company—the Electrical Development Company—has a fixed and definite amount of power sold in Canada, whereas the other companies have nothing but hopes, prospects, and expectations in Canada, the Electrical Development Company should be correspondingly restricted in the amount of power which they may transmit into the United States.

On the American side of the river the situation is entirely different. We, the Ontario Power Company, have spent the greater part of \$1,000,000 in acquiring a broad right of way and building a transmission line to the river, and our chief customer, the Niagara, Lockport and Ontario Power Company, has planted its lines in duplicate and in branches throughout a territory 150 miles long and 20 miles wide, at an expense of upward of \$4,000,000, and for several months past has been delivering power at the extreme end of the line, and would have been delivering at various points along the line but for the delay in the delivery of electrical apparatus of the customers which is now at last being delivered and installed, and power is to be furnished to them at numerous points within the next thirty days.

To recapitulate, then, as against the Electrical Development Company, we claim:

First. That their plant has a capacity, on approved plans, of only two-thirds of our plant.

Second. That it has definite contracts for the sale of power in Canada, which the other companies have not, and that the estimated amount of these contracts should be deducted from the amount allotted to them for transmission to the United States.

Third. As to the *Canadian Niagara Power Company*.—Mr. Stetson claims that his company is the pioneer company in the development of Niagara power. We cheerfully concede this claim. By the brains and courage of Mr. Stetson and his associates at a time, ten years ago, when the electrical science was far less developed than at present, and the hazard of the enterprise correspondingly greater, the utilization of so much of the power of Niagara as can be taken without in any way whatsoever detracting from its splendor and its glory as a scenic spectacle was made possible; and I would like to add, if I may, that Mr. Stetson and his friends, as well as those associated with me in the Ontario Power Company, are the true friends of Niagara and can be more safely trusted to preserve its beauty than

the noisy advocates who occupied so much of your time yesterday with misleading statements. But in conceding that Mr. Stetson's company was the pioneer company, and that he and his associates have immensely benefited mankind by the development of Niagara power, we do not concede that they have any priority of claim, or of legal right, or of equity, as against the other two companies in the matter now pending before you, viz. the relative amounts of power to be taken by the respective companies in the United States. The agreements which he read to you this morning are all matters of record and are not disputed, but we can not see that they have any bearing upon the specific question now before you.

We think that the question—to wit, the equitable division of 150,000 horsepower between the three companies—is to be decided by the relative magnitude of the works on the Canadian side, entirely excluding the works on the American side; by the amounts paid by the respective companies to the park commissioners for their rights and franchises; by the amounts expended by themselves, their affiliated companies, and their customers for transmission lines to the Niagara River, across the Niagara River, and in the State of New York. On this basis of comparison the equitable claims of the Ontario Power Company are far in excess of those of Mr. Stetson's company. To begin with, we produce one-fourth more power from an equal amount of water than they do, and while Captain Kutz acknowledges this fact, he thinks that no attention should be paid to it.

As Mr. Stetson has referred to that, I do not think he has quite correctly quoted Captain Kutz.

MR. STETSON. I did not say that at all. I said "not accepted by him."

MR. GREENE. Not accepted.

MR. STETSON. That is what I said.

MR. GREENE. That is the language Captain Kutz uses. I quote from his report:

If the relative investments of the three transmission companies associated with them for distribution in the United States are alone considered the claims of the Niagara, Lockport and Ontario Company are unquestionably superior to those of the other transmission companies. As the object of the law is to restrict, directly or indirectly, the amount of water diverted, it has been suggested that some weight should attach to the fact that the Ontario Power Company makes greater use of the water that it diverts than either of the other companies. Each of the companies, however, fully utilizes the head incident to its geographical location, and any distinction in the matter of permits based on relative natural advantages would appear to be unjust.

Captain Kutz does accept the fact very positively. He states it as a fact, and no one can deny it, that we do produce about one-fourth more power with an equal amount of water than either of our competitors. Captain Kutz says it is unjust that the competitors should suffer or be discriminated against because one has a relative natural advantage over the other. It seems to me that is a very fair ground of discrimination. When there is not enough to go round, you have to cut everybody down, and when the object of the whole legislation is to prevent the diversion of water, that company which makes the greatest use of water to produce the greatest amount of power with a given amount of water should certainly have the benefit of its natural situation.

I think Captain Kutz's facts are right, but I submit his conclusions are entirely wrong.

Secretary TAFT. That is, your idea is this—that if I were to reach a conclusion that these companies were in such relation that really the matter ought to be divided one-third to each, the division ought to be on the basis of horsepower produced?

Mr. GREENE. Yes, sir; and in the argument of the Lockport Company, which will follow, and in their brief—

Secretary TAFT. That is, to divide one-third to each?

Mr. GREENE. One-third plus a fourth. We should have a third plus a fourth of a third, or a twelfth, and the others should have the balance.

Secretary TAFT. That each should have the right to transmit as much horsepower as it can make out of 3 into 13,000 cubic feet?

Mr. GREENE. Yes, sir; that is what we claim—that we should have the full benefit of our natural advantage. We take the water, as seen on these various maps, at the very top of the rapids, and we discharge it below the falls, with a total head of 202 feet, and an actual available head, or what is called the effective head, of 175 feet.

Mr. STETSON. Mr. Secretary, I want to say right there that I think that claim is right. I think the distribution should be according to the volume of water used and not according to horsepower produced by the volume. The volume of water used is adopted as the basis on the American side. Power has been adopted on the Canadian side because there is no way of measuring power as it is brought in by the volume of water that produces it; so by the nature of the circumstances it has to be measured in terms of horsepower.

Mr. GREENE. That is exactly the way it happens.

Mr. STETSON. But I do want to be fair about this thing. I do think it is fair that it should be measured in terms of water used. I do not see any answer to that claim.

Mr. GREENE. Mr. Stetson has stated exactly how this thing arose. We are singularly fortunate in being located so as to take the water where we do take it. The Electrical Development Company takes it about halfway down the rapids, and Mr. Stetson's company about two-thirds of the way down the rapids. They discharge by a tunnel, one under the falls and the other around the bank, and with the best their engineers can do they can not get an effective head of much over 148 or 150 feet. I think I state it correctly. Mr. Barton will correct me if I do not.

Mr. BARTON. It is not quite so much as that.

Secretary TAFT. Where do you measure your horsepower?

Mr. GREENE. We measure it on the wheels down here [indicating on map], and our engineers certify to us that we get something more than the 175 feet effective head that we anticipated.

Secretary TAFT. How much horsepower do you lose in the transmission of your electricity to Syracuse?

Mr. GREENE. We lose 8 per cent on a double line and 16 per cent on a single line. That is merely a matter of the size of the copper or aluminum. Our wires happen to be aluminum.

I believe there is nothing more to be said on that question of economy of the water; but I want to get that clearly in your mind, for I think Captain Kutz, out of the tenderness of his heart, really did not live up to his convictions. He stated the fact and then said,

after all, he thought it would be an injustice to take advantage of the fact; but when there is not enough to go round, Mr. Secretary, it is not a question of injustice. Every man has to stand for the last thing he can get when we are cut down as we are by this bill.

MR. STETSON. I do not know that you have improved the scenic beauty of Niagara by putting your power house in the gorge where you could get the greatest fall.

SECRETARY TART. I understand he has it so constructed that moss can grow on it.

MR. STETSON. We are willing that moss shall grow even on the wheels.

MR. GREENE. I will answer that, Mr. Secretary. When we complained to our engineers that the cost of the works was so far exceeding their estimates they said, "We did not calculate in our estimates that you were going to spend between \$300,000 and \$400,000 for art galleries." These buildings up here [indicating] are particularly designed with a view to the surroundings and not at all as factory buildings, and it is a fact that we have spent between \$300,000 and \$400,000 in excess of the business requirements of the buildings in order to make them dignified, proper buildings with reference to all the surrounding country and the surrounding scenery.

Secondly. From the 11th of April, 1900, to the present time we have paid to the park commissioners \$30,000 per annum, or \$195,000 in all, as rentals and in consideration of our franchises. The agreement between the Canadian Niagara Power Company and the park commissioners dates from July 15, 1899, and during that time it has paid as rental and in consideration of its franchises, the sum of \$15,000 per annum, or about \$105,000. The agreement of the Electrical Development Company dates from January 29, 1903, and since that date they have paid at the rate of \$15,000 per annum for the same purposes, making a total (when the next payment is made) of, say, \$60,000. We have thus paid considerably more than the other two companies combined by way of rental to the park commissioners from the date of the respective agreements under which all of us are acting.

In other words, Mr. Secretary, we have paid \$195,000, Mr. Stetson's companies \$105,000, and the Electrical Development Company \$60,000, by way of rental and in consideration of our franchises. This takes no account of the money spent before the construction period or before the present contracts were entered into with the park commissioners. Prior to that Mr. Stetson's company had been paying, I think, \$25,000 a year for a period of seven or eight or nine years—quite a long period—but that he did to maintain his franchise. He did not do any work under it. All three of these companies, as soon as they got their agreements with the park commissioners, proceeded to build their works as soon as the plans could be drawn, and the amounts paid during the construction period since those contracts were drawn are as I have stated, showing that we paid considerably more than the other two companies combined. We pay that because it is universally acknowledged that we have larger franchises than the other two companies.

Hereafter we pay a minimum of \$30,000 and the other two companies will pay a minimum of \$15,000 per annum; and the rate per horsepower decreases as the amount of horsepower increases for each

of us; but at all times for an equal amount of power we pay more than either of the other two companies.

Secretary TAFT. What percentage of what you get for your horsepower does that amount to?

Mr. GREENE. It starts in at \$1.50 a horsepower and it ends up at 50 cents, always keeping the lower amounts at \$1.50. It does not all reduce to 50 cents. The first 20,000 pays \$1.50. The next 10,000 pays \$1. The third 10,000 pays 75 cents, and all after that 50 cents. We sell our power to the Lockport company at the international boundary at \$12.50.

Secretary TAFT. How much do the other companies pay?

Mr. GREENE. They pay the same way. They get the first 10,000 horsepower for \$15,000, and then they get to the \$1 rate on the second 10,000, and the 75-cent rate on the third 10,000, whereas we have to get up to the fourth 10,000 before we get down to the 75-cent rate. I have put all that in figures, and I will give one copy to Mr. Stetson. It excludes always the figure you paid before the contract was made.

Mr. STETSON. You mean before the modification contract was made?

Mr. GREENE. Yes; before the present contract was made.

Mr. STETSON. Before the contract of 1899 was made, because there would not be anything to that contract of 1899 except for the contract of 1892.

Mr. GREENE. A part of it is the same. Only certain sections of our contract of 1892 were changed by the law of 1899.

Mr. BARTON. These figures are all right, I have no doubt, but we pay a dollar after our first 10,000.

Mr. GREENE. Yes; that is right. Did I state that wrong? For your first 10,000 you pay \$1.50, for the second, \$1; for the third, 75 cents, and all after that 50 cents, whereas we have to pay \$1.50 on 20,000, \$1 on the next 10,000, 75 cents on the third 10,000, and we do not get down to 50 cents until after we have passed 40,000.

Secretary TAFT. Suppose you were to divide it equally—52,500. The difference between you and the other companies would be about \$10,000, would it not?

Mr. GREENE. Yes, sir; exactly.

Mr. STETSON. There is a constant of \$10,000?

Mr. GREENE. A constant of \$10,000. That is it exactly.

Secretary TAFT. But that \$10,000 secures to you the possibility of using the Welland River, does it?

Mr. GREENE. If you will ever let us make any use of it.

Secretary TAFT. We have nothing to do with it, have we?

Mr. GREENE. We will develop the Welland River very quickly if you will let the power come into the United States.

Secretary TAFT. That is what you bought it for?

Mr. GREENE. That is what we bought it for. We paid extra because it got more rights and franchises than any other company.

Secretary TAFT. Does not that \$10,000 represent the difference?

Mr. GREENE. Yes.

Secretary TAFT. Then ought it to be made an argument for the difference in the distribution of this horsepower, which relates only to that produced by Niagara?

Mr. GREENE. We think most assuredly it should be if the amount to be brought into the United States is to be restricted, whereas at the time those franchises were granted it was not restricted.

Secretary TAFT. This is restricted only to the electricity produced by the Niagara River.

Mr. GREENE. The Welland River is a branch of the Niagara. If we put that development through, it would draw out of the Niagara. There is not enough water in the Welland River.

Secretary TAFT. If you were to let it back into the Niagara above the falls, it would not injure the falls?

Mr. GREENE. We would not do that. That would be a waste of the water. We would want to get the full head, and that is why the first plans were not carried out. The thing would not pay on a 40-foot head.

Secretary TAFT. Do you not think the fact that you paid \$10,000 for something that is not worth it—

Mr. GREENE. It is worth it.

Secretary TAFT. Ought not to influence the distribution?

Mr. GREENE. I deny your premise at once, before you go another step. It is worth it if we can ever get it into the United States.

Mr. STETSON. You are going to make it worth it now?

Mr. GREENE. I am trying to as hard as I can. I quote these figures, which I will now read. For instance, for 40,000 horsepower we pay \$47,500 and each of the other companies pays \$37,500; for 80,000 horsepower we pay \$67,500, and each of the other companies \$57,500 per annum; for 120,000 horsepower we will have to pay \$87,500, and each of the other companies \$77,500 per annum. The fact is that for a given amount of power, 20,000, 30,000, 50,000, 70,000—whatever it may be—we always have to pay more money to the park commissioners than either of the other companies.

As Mr. Stetson says, there is a constant of \$10,000.

Finally, the most important consideration, however, bearing in mind the broad equities of the case and the fact that this bill was intended in some measure to protect the capital honestly invested, as well as to preserve the beauty of Niagara Falls, the most important consideration, I repeat, in determining the amount of power which is to be brought into the United States is the amount of money invested for that purpose. As between ourselves and Mr. Stetson's companies, Captain Kutz finds that we have expended nearly \$1,000,000 in Canada and \$2,785,000 in the United States for such purposes, whereas Mr. Stetson's companies have expended \$430,000 in Canada and \$600,000 in the United States for such purposes.

Those are the figures exactly as given on page 12.

Secretary TAFT. Do you mean four million?

Mr. GREENE. No, sir. It is Captain Kutz's report, page 12. I say four million for us.

Secretary TAFT. Oh, yes; for transmission.

Mr. GREENE. Four million for our transmission and \$430,000 plus \$600,000 by Mr. Stetson's company.

Our total investment at the time that Captain Kutz's report was made was \$3,785,000, against \$1,030,000 by Mr. Stetson's companies. We had at that time expended nearly four times as much as he, and since that time our expenditures under contracts long since made have proceeded at the rate of about \$250,000 per month, adding another \$1,000,000 to the cost, making our relative expenditure nearly five times as much as his. It is probable that all of our lines will be completed under the present projects within the next ninety days,

and Mr. Stetson's within the same time, and when they are completed our expenditures will be more than five times as much as his. On that theory, Mr. Secretary, can you be asked to treat these two companies equally in the matter of the amount of power that they shall be allowed to transmit into the United States? We have spent five times as much as they. The lines of our chief customers in New York as compared with the lines of Mr. Stetson's companies and his customers cover a territory twelve times as great, containing a population three times as great, with a probable demand for power at least five times as great.

These facts and arguments are set forth in our brief of November 2. I speak now solely from the standpoint of the Ontario Power Company. Mr. Cravath will present the claims, which, in many respects, are entirely separate and apart from ours, of the Niagara, Lockport and Ontario Power Company. We ask, with all respect, that these briefs may have your more careful consideration before you reach a decision on the question now pending before you.

MR. STETSON. Mr. Cravath, I have to leave now, and I desire to call attention to one thing that may concern us all.

The reference I had to Captain Kutz's report was section 18, on page 10, not section 16; but you will observe there is a discrepancy in Captain Kutz's report as published. I do not know which way it works. In section 18, on page 10, he states, which is accurate, that the cost of installation, deducting the value of the franchise, is \$5,350,000 for our company, and on page 12 he puts it at \$4,672,000. I do not quite know how to reconcile them. I refer to the tabulated statement on page 12. He puts it there as \$4,672,000, but on page 10, in section 18, the same item apparently, as far as I can understand it, is \$5,350,000.

MR. GREENE. May I make a suggestion, Mr. Secretary, which I think will enlighten Mr. Stetson?

Secretary TAFT. Certainly.

MR. GREENE. On page 10 he speaks of the cost of the installation, \$5,350,000. If you add to \$4,672,000 the amount on the next line, "amount required to complete existing contracts and orders, \$678,000," you will have the precise amount of \$5,350,000.

MR. STETSON. That is it. I did not understand it.

STATEMENT OF PAUL D. CRAVATH, REPRESENTING THE NIAGARA, LOCKPORT AND ONTARIO POWER COMPANY.

MR. CRAVATH. Mr. Secretary, I feel so uncertain of my ability to entertain the court at the end of such a long session that I have yielded the close to Mr. Johnson. I appear on behalf of the Niagara, Lockport and Ontario Power Company, a New York corporation, whose sole business is to utilize and distribute in the United States power generated by General Greene's company, the Ontario Power Company. I should say at the outset that this enterprise is in every way distinct from the Ontario Power Company. It is not only a separate corporation organized under the laws of New York, but a majority of its stock is owned by persons having no interest whatever in the Ontario Power Company. So we have no possibility of advantage in the Canadian market. Our success or failure depends entirely upon our ability to secure this power under our contract with General

Greene's company, and market that power in the territory we have developed in the United States.

The factors which are to be considered in distributing this power are very carefully stated in your opinion handed down in July after the hearing at Buffalo and Niagara Falls. I have quoted an extract from that opinion at page 2 of my brief. I shall not take time to read to you your own language. Captain Kutz's examination and report were based upon those factors, and his report was exceedingly thorough and painstaking, and we are very glad to accept Captain Kutz's report as furnishing the facts on which your decision is to be rendered, supplemented to a certain extent by facts which have developed since that report was made. We assume that this report should be treated as a master's report would be, and we simply differ with certain of Captain Kutz's conclusions.

The company which I represent, which I shall for brevity call the Lockport Company, was organized many years ago under the laws of New York, and acquired from the State of New York the right to develop a very important power proposition at Lockport, utilizing at that point the waters of Niagara River. We very vigorously urged the claims of the company, based upon its rights at Lockport, before the Rivers and Harbors Committee when the Burton bill was being considered; but the present legislation, of course, puts an end to our hopes to develop our power at Lockport, and if that legislation stands, as I assume it will, we must dismiss our Lockport plans. So that for all practical purposes—

Secretary TAFT. How does the water reach Lockport; by canal?

Mr. CRAVATH. By a canal. This international railway map will show it. Lockport is on the edge of the escarpment. The canal, as you know, drops there 50, 60, or 70 feet, and below the lower level of the canal there is still a large drop through this 18-mile creek. The water was to have been carried across there in a canal about 7 or 8 miles long, and then dropped over this escarpment, with a total fall of 240 feet, of which probably 220 feet could have been utilized. It could have been a ship canal also—that is, it was large enough for ordinary navigation. It was to have been 12 feet deep.

Secretary TAFT. That is the same kind of plan as that of the electric company?

Mr. GREENE. On all fours with it. They take in at Cayuga Island, within half a mile, and they go around here [indicating], and their plan was to discharge here [indicating].

Mr. CRAVATH. Therefore, for the purpose of this discussion, the Lockport Company should simply be considered as a corporation whose sole business is the utilization of power generated by General Greene's company in Canada.

A good while before the Burton bill was even discussed the Lockport Company entered into a contract with General Greene's company whereby it agreed to take from them a minimum of 60,000 horsepower at the international boundary line; and whereby it reserved the option to take increased power to the amount of 180,000 horsepower; but 60,000 horsepower it took from them regardless of its success in marketing it.

It then proceeded to build a very extensive transmission line, beginning at the point on the international boundary line where it

received the current generated in Canada, and extending about 150 miles east of Syracuse, taking in Rochester, Tonawanda, Batavia, Lockport, and many other intervening cities. It also proceeded at once to procure contracts for the future delivery of this power to railroads, electric-light companies, manufacturers, and other consumers within the territory.

That work had progressed far when the Burton bill was passed. The company was irrevocably committed to the completion of that work. It was precisely in the position, to use your illustration, of a man who had carried his house up to the roof beams, and of course was compelled to complete the structure or lose it. I think the good faith of the investment we have made is not to-day questioned by anyone. Captain Kutz expressly finds in his report that all of these companies have made their investments in good faith and were committed to the investment which has been made before the enactment of the Burton bill; indeed, before the agitation which resulted in that legislation.

We have a right of way which cost almost one and a quarter million dollars. We have erected 400 miles of transmission lines, the longest line, as I have pointed out, being 150 miles long. We had, at the time of Captain Kutz's investigation, invested in our transmission lines alone almost \$3,000,000, and that investment, at the close of this year, will amount to \$4,000,000. That investment is entirely in completing the plans originally made. We have not enlarged our plans. For instance, our first contract for power, taken before the Burton bill was introduced, was taken in Syracuse, at the eastern terminus of our territory, and among the first parcels of rights of way acquired were parcels upon the line between Rochester and Syracuse; so that our expenditure has been entirely in completing the plans to which we were irrevocably committed before the Burton bill was introduced.

You will see from the discussion which has taken place, Mr. Secretary, the radical difference in the scope of the plans of these three sets of corporations and the territory which they are intended primarily to serve. The Electrical Development Company is primarily a Canadian company. Its first transmission line was built to Toronto. Its first contracts are in that city; and Captain Kutz reports that it has business in sight in Toronto of between thirty and forty thousand horsepower. It intends, of course, to transmit a portion of its current into the United States, but its primary function is to develop the Canadian business.

Both of Mr. Stetson's companies have thus far confined their operations to Niagara Falls, Tonawanda, Buffalo, and the adjacent territory, and it may be fairly assumed, in view of what Mr. Stetson has said regarding the prospects for the sale of power within the territory, that now that the amount of power is limited they will not carry their operations beyond this limited territory, all of which I think is within 30 miles of Niagara Falls.

We have avoided Buffalo, which was well supplied by Mr. Stetson's companies, simply carrying our lines to its suburbs to reach certain manufacturing plants. We have chosen to go into what is called the long transmission side of the problem and have developed this territory 150 miles long, with a width of at least 20 miles, and capable of indefinite expansion sidewise. This territory, even with

the width of 20 miles, including Rochester and excluding the population of Buffalo and Niagara Falls, embraces 1,000,000 people, and including those cities, 1,500,000 people.

Our lines supply the only means on that territory east of Buffalo for the utilization of the power generated at Niagara Falls. While Mr. Stetson has been a pioneer in the generation of power, we have been the pioneer in the long-distance transmission of this power in the State of New York, and, as I say, we have reached the most important cities in western and northern New York, next to Buffalo, including Rochester and Syracuse.

As you pointed out in your opinion, rendered last July, a very important consideration is the relative investment of the three sets of companies in their plants. On page 5 of my brief you will find a table showing the relative investments, generating capacity, and ultimate capacity of the three plants on the Canadian side. Without stopping to read the figures, I will call your attention to the percentages.

Of the aggregate investment on the Canadian side, as reported by Captain Kutz, we have made 35.9 per cent. Of the aggregate generating capacity of the three plants on the Canadian side, we have 36.6 per cent. Of the aggregate ultimate capacity of the three plants measured by the capacity of the intakes, and also by the extent of our rights under our grants from Ontario, we have 43.4 per cent. This is on the Canadian side alone.

Now, turning to page 10 of my brief, we have a table showing the investments of the power companies and transmission companies consolidated. From that it appears—again taking Captain Kutz's figures—that the aggregate investment of the three sets of applicants in power plants and transmission lines in the United States is \$17,945,000, and of that investment we have made 44.2 per cent.

Since this report was made, the further expenditures by the three applicants bring the total investment, as it appears on page 11—and here I supplement Captain Kutz's report by facts of later occurrence—of the three enterprises up to \$20,192,000, of which our proportion is 46.2 per cent.

But taking the situation as it stood at the time of Captain Kutz's report, we submit that upon the scope of relative investment alone we are entitled to 44.2 per cent of the water diverted by the three sets of enterprises. I use the expression "water diverted" advisedly, because of the distinction between *water* diverted and *power* diverted at the boundary line.

As General Greene has pointed out and as Mr. Stetson has also conceded, our plant produces approximately one-quarter more power per cubic foot of water than the other plants, so we think we should have based on our investment alone 55.2 per cent of the power delivered at the international boundary line. That is to say, of the 10,400 cubic feet of water to be diverted, according to Captain Kutz, to produce 160,000 horsepower we should have 55.2 per cent, which is 5,740 cubic feet. That is our share of the water, and if we had our share of the water we would produce at the international boundary line 87,800 horsepower.

Let me say at this point what I meant to have said at the outset—that the amounts of power applied for furnish no criterion, because the applicants had proceeded upon different theories. For instance,

after a careful calculation of our requirements and contracts and giving due regard to the fair requirements of other applicants we have decided that 90,000 horsepower was our fair share. The Electrical Development Company has simply applied for half of its generating capacity, and Mr. Stetson's company has applied for the entire generating capacity of its plant. If we had made application on the same theory as the other companies, we would have applied for 180,000 horsepower, which Captain Kutz reports is our ultimate generating capacity and which is the capacity of our transmission lines in the United States.

Quite apart from the considerations based upon our relative investments, we wish to submit our claims to your consideration based upon the contracts which the Lockport company has made and the business which it must do in order to make its investments profitable.

On the subject of contracts Captain Kutz makes the following report as to our company, which will be found on page 8 of his report:

The Niagara, Lockport and Ontario Power Company has actually executed contracts which call for delivery within the near future of 6,000 horsepower, with provision for fixed increases at intervals varying from three months to three years, so that at the expiration of that time they will have a firm contract with their present customers for 14,240 horsepower, with options on the part of the purchasers which give them the right to increase the amount to 70,000 horsepower.

Let me say that in all our contracts our customers fix a very low minimum, and the maximum is supposed to be not far from the actual requirements, so that in almost every case the amount of current a customer has the right to have under the contract is, in our judgment, a fair measure of the current which will actually be taken.

He proceeds:

In addition the company claims to have contracts verbally closed for 13,000 additional firm horsepower and negotiations pending for 25,000 horsepower, making a total of 52,000 horsepower, for which they hope to have a market in the near future. The optional amounts named in these contracts and negotiations aggregate 166,000 horsepower. At the time of the examination this company was actually transmitting to the United States 700 horsepower.

These verbal contracts and pending negotiations to which Captain Kutz refers have since ripened, many of them, into contracts. So that we have to-day contracts which call for a minimum of 31,000 horsepower, a maximum of 110,000 horsepower, and General Greene and the officers of the Lockport company estimate that those contracts will require in the very near future 90,000 horsepower, so that I will say with confidence that 90,000 horsepower are necessary to meet the requirements of our existing definitely closed contracts.

In addition to that, we have pending negotiations for a much greater amount of power, and I am assured that if we could get all the power we could transmit we could within three years find customers for at least 120,000 horsepower and perhaps for 150,000. So in saying we need 90,000 horsepower to meet the requirements of our existing contracts I pay no attention to the business in sight which has not been definitely closed.

The reason we have taken contracts for 90,000 horsepower, the reason we have allowed negotiations which have been pending (and which were pending in almost every case before the Burton bill was passed, but were not closed because our plant was not then complete

and we were not in a position to actually deliver power) to ripen into contracts for 90,000 horsepower is because the sale of 90,000 is absolutely essential to make our investment profitable. By our investment I mean the investment of the Lockport Company. We have invested upwards of \$4,000,000, or we will have invested by the end of this year upward of \$4,000,000, in our plant, and a further investment will be required to round out the transmission line for the delivery of that 90,000 horsepower. Unless we can sell 90,000 horsepower, or rather get it to be sold, we can not make a fair return upon our investment. Sixty thousand horsepower is absolutely required to insure interest upon our bonds.

I should go back and say that upward of \$2,000,000 of our bonds were sold before the Burton bill was passed and had passed into the hands of complete strangers to our enterprise. The sale of additional bonds required to reimburse the owners of this enterprise for a portion of their expenditures is dependent upon our having at least 60,000 horsepower.

But if our supply is limited to 60,000 horsepower, while we might earn the interest upon our bonds, and will do so, I believe, we will get no return for the capital not represented by bonds, and there will be no return to these gentlemen who have invested a very large amount of time and a very large amount of hard work in this enterprise, which has not only turned out to be a hazardous one, but an extra hazardous one.

Now, about the other companies. Of course I can not follow Mr. Stetson into the discussion which he made to-day and the discussion which we find in his reply brief, filed yesterday, regarding the contracts of his company and its prospects for business, because we have no information regarding his company formally before us except the information contained in Captain Kutz's report.

MR. LOVELACE. They were filed in the Department here originally.

MR. CRAWFORD. We have never seen them. On page 11 of Captain Kutz's report you will find what he says regarding the contracts of Mr. Stetson's company, as follows:

At the present time there is no definite contract covering the sale of the power intended for delivery in the United States. This is explained by the intimate financial relations existing between the Niagara Falls Power Company and the Canadian Niagara Power Company. At the time of the examination it was actually transmitting to the United States about 16,000 horsepower, but the combined load sheet of the two companies shows that the maximum amount thus far delivered to customers is about 85,000 electrical horsepower.

There is no doubt that there was excluded the 16,000 hydraulic horsepower which was delivered to one of the customers, and there is no doubt that the Niagara Power Company have contracts in excess of that amount, but we have no evidence to indicate that the contracts of the Niagara power companies in excess of those which can be filled by the American plant at all approach the contract for 90,000 horsepower which we have entered into in our territory.

As to the Electrical Development Company, Captain Kutz finds, on pages 9 and 10 of his report, as follows:

The Niagara Falls Electrical Transmission Company has not executed any contracts for the delivery of power, but expects that its allied interests will require 17,500 horsepower. This expectation is based on the use by the Niagara Falls Gas and Electric Light Company of 3,000 horsepower, though the amount now distributed by this company is about one hundred horsepower.

It also includes an estimate of 4,000 horsepower for the Buffalo, Lockport and Rochester Railway Company. This amount is based on a double-track road, while the contract for the construction of the road calls for only a single track at the present time. The company also submitted confidentially a list of corporations who had made inquiries with reference to the purchase of power from the Niagara Falls Electrical Transmission Company, together with the amount of power which they would probably require. This list aggregates 141,000 horsepower. It is needless to say that these inquiries involve no obligation on the part of either party.

Elsewhere in his report Captain Kutz, in substance, refers to the arrangements of the Electrical Development Company for the marketing of its power in the United States in an embryonic state.

The table on page 10 of our brief shows that their expenditures for transmission to the United States have been exceedingly small, only \$246,000 as against almost \$3,000,000 in our case at that time, and only \$600,000 in the case of the Canadian Niagara Power Company.

So we submit that not only because of our much greater relative investments, but because of our commitment to these contracts for the delivery of power to a much greater amount than either of the other companies, we are entitled to substantially more than a third of the power, and we urge that we are entitled to 90,000 horsepower, which is the minimum amount required to enable us to perform our contracts and to earn even a moderate return upon our investments.

I think we may fairly urge in support of our own application the needs of the people who live in our territory. As I have already pointed out, our lines serve a population of about a million people, and many important cities, including Syracuse and Rochester, while the population of the territory now being served by the Niagara Falls power companies is about 500,000, including Buffalo, Niagara Falls, and Lockport. That territory—that is, the Buffalo and Niagara Falls territory—is assured under existing conditions of at least 200,000 horsepower. They will get 160,000 horsepower from the two American developments, and it is fair to say they will have an opportunity of getting in one way and another at least 40,000 horsepower from Mr. Stetson's companies and perhaps from the Electrical Development Company. Therefore that territory of 500,000 inhabitants is sure of 200,000 horsepower of Niagara power.

We submit that this much more extensive territory, having a population of a million inhabitants, which is served by our transmission system, is entitled to at least 90,000 horsepower out of this total. That is one-quarter of the amount of horsepower per inhabitant that is insured for the Niagara Falls-Lockport district.

Mr. Ely and others have pointed out the prosperity, the distinct stimulus to manufacturing which inevitably follows the introduction of cheap Niagara power. May we not fairly urge the claims of the million inhabitants of our territory to their fair share of this enormous stimulus to activity?

Secretary TAFT. You have not taken up or considered in your brief, have you, the claim to priority?

Mr. CRAVATH. I was just about to speak of that, Mr. Secretary.

So far as I can see, the only foundation and logic of Mr. Stetson's argument, based on the undoubted fact that his American company was the pioneer, the patriarch, of the power companies, and that his Canadian company received the first grant in Canada—at least, a

grant preceding that of the Electrical Development Company and of our own company—is the analogy to the position of junior grantees of the water from a stream having a limited amount of power with respect to their senior grantee. I assume that if the owner of the stream grants to A the power to take a thousand horsepower from that stream, and later grants to B and C the right to take horsepower from that stream, the rights of B and C may be subordinate to the rights of A.

It seems to me that analogy does not apply to our present situation, because when these grants were made for our purposes, for the purposes of these power companies, the waters of Niagara Falls were as inexhaustible as the air, and the reservation in respect to Mr. Stetson's company in the grant to our company and the reservations in the grant to the Electrical Development Company in respect to both of the other companies were not with a view to dividing up a limited amount of water. They were with the purpose of protecting the Canadian government primarily, and incidentally the prior grantees against interference with their physical property, their tunnels, their forebays, their canals, and their power houses. There is no suggestion in any of these grounds that there was a limited amount of water in respect of which the prior rights of any grantee were being recognized.

It seems to me the situation would be precisely the same as it would have been if, instead of utilizing the waters of Niagara, these power companies had utilized air. Or, to use a better illustration, had utilized what assumed to be cheap coal and cheap labor to be found in Canada. Assume that they had done that, and after three plants utilizing that cheap coal and cheap labor had been installed the Congress of the United States saw fit to prohibit the importation into the United States of any power generated by Canadian coal, except 160,000 horsepower generated by the three existing plants, and you had been asked to distribute that 160,000 horsepower among the three applicants. Surely the fact that one corporation happened to be in business first or happened to be chartered first or happened to get its right to use coal first would not place it in a better position. The sole test would be the test which you are applying here: Did those companies make their investments in good faith before the changed conditions came which resulted from the enactment of the Burton law? If they did, I submit they would all be coordinate so far as the question of priority is concerned; and I submit our position is just the same as it would have been if we had been dealing with cheap coal and cheap labor instead of the cheap power of Niagara Falls.

Secretary TAFT. Would you concede that if the cataclysm had taken place that Mr. Stetson supposes, so that all the water had been reduced to only enough to run his plant, he would be entitled to his grant, to shut you out?

Mr. CRAVATH. I have had no occasion to consider that question, but I assume Mr. Stetson is right when he says that in the case of a limited supply of water priorities of rights may govern.

Secretary TAFT. Would you continue the analogy to a limited demand for that which is made by the water?

Mr. CRAVATH. I say, assuming that to be so, it does not apply to this case, where the supply of water is unlimited and where the embargo results not from a limited supply of water, not from any action by

the Government which granted the right, but by the action of a foreign government in limiting the importation of the power.

Secretary TAFT. You do not think the analogy continues to the difficulty of marketing?

Mr. CRAVATH. No.

Mr. GREENE. If the cataclysm took place, Mr. Secretary, would the fact that we are higher up the stream have any bearing?

Secretary TAFT. I have only examined it hastily, but I should judge that as you are all within the park, the limitation which makes you the junior to his grant may exclude you from the use of any water that would prevent his using the water.

Mr. GREENE. We being higher up, do you think that would have no application?

Secretary TAFT. I do not think it would make any difference. It says expressly that you are to do nothing which will prevent his use of the water first granted.

Mr. CRAVATH. And we have done nothing. We have not passed the Burton bill.

Secretary TAFT. I guess we will acquit you of that.

Mr. CRAVATH. So we say, whatever the law may be as to the distribution between two or more grantees of an amount of water not sufficient for all, the analogy does not apply to our case where the supply of water is unlimited and where the difficulty is entirely created by what is in effect an embargo levied by a foreign government.

Mr. Stetson also points out in his brief that the effect of the Burton bill is to prevent his American company carrying out its original plan of building a new canal and building a second power house of the same capacity as the first. It seems to me the Canadian situation and the American situation must be considered as entirely distinct, that the fact that the stock of the Canadian Niagara Falls Power Company is owned by the American Power Company has no more bearing upon this discussion than the fact that the stock of the Electrical Development Company is owned by the Canadian citizens; but if there were force in Mr. Stetson's argument that because he has suffered on the American side he is entitled to consideration, I should argue with great vigor that we have suffered very much more than he has, in that we have completely lost the opportunity of making any development at Lockport, where we had originally hoped to develop a plant of 200,000 horsepower. But I do not press that, because it does not seem to me to be a sound argument.

Finally, Mr. Secretary, it seems to me that in considering our relative investments, in considering our relative share of the aggregate investment in power plant and transmission line, considering the enormous superiority of our investment in transmission lines on the American side, considering the contracts which we have been compelled to enter into to protect that investment, considering the necessity of having at least 90,000 horsepower to protect those contracts and make our investment profitable, and considering the fair claims of our territory, comprising a million inhabitants, we shall really be less favorably situated with 90,000 horsepower than the other two applicants if they divided the remaining 70,000 horsepower between them.

Secretary TAFT. I think it is only fair to the counsel for the four interests here that a letter which Captain Kutz has written after having examined the brief and references should be submitted to counsel with a view to their examination of the points he makes. I am not familiar with it at all, but it takes up certain statements with respect to the character of the contracts and calls attention to other facts that he thinks ought to be taken into consideration in connection with them. I will have it printed and sent to the various interests.

Mr. CRAVATH. I just want to make one suggestion more. I think it may be fairly inferred that the great part of our territory will never have another transmission line carrying power from Niagara Falls. That is, the amount of power which will be carried there will be limited. As I have pointed out, we must have 90,000 horsepower to make our lines pay. So in all human probability no other company with Niagara Falls and Buffalo near by would feel justified in carrying a transmission line so far away as Syracuse for the sake of marketing the small amount of power, comparatively, which would be available to another company. So the chances are that the territory which we serve will have to depend on us and our lines in order to receive its share of the Niagara Falls power.

STATEMENT OF JOHN G. JOHNSON, REPRESENTING THE ELECTRICAL DEVELOPMENT COMPANY.

Mr. JOHNSON. Mr. Secretary, Captain Kutz has filed a report which will be thoroughly helpful to you in your consideration of this subject, not only because of the information it gives and the settlement of contradictory statements, but also because, as has been stated to me by my client, he has in a spirit of the utmost fairness endeavored to get from each company everything in its power to give favoring the reasons why it should receive special consideration at your hands.

The result of this report is to give to every company the full benefit, in your consideration, of everything which, after investigation, ought to be by you regarded.

I quarrel with his report, not because of any facts he states, but because of two points of view taken by him which I deem erroneous.

The result of the first point is to make necessary a squeeze upon the companies and a dispute over the division of the very meager power which he suggests should be allowed presently to be imported, viz, 160,000 horsepower.

Secretary TAFT. That is under his construction of the statute?

Mr. JOHNSON. Under his construction of the statute, which, of course, is open to review. With your legal experience you will, I am sure, feel able to deal with all matters of interpretation independently.

The statute certainly conveys the idea, as far as Congress in a statute can express an idea, that 160,000 horsepower can, with entire safety and propriety, be delivered. This idea resulted from the information its committee gathered, which, as you know, held innumerable hearings and heard a great deal of testimony. Congress presumed that at least 160,000 horsepower could, with entire safety and propriety, be permitted to be generated.

Whilst in the act it is said that you are not compelled to accept its belief of what should be the minimum allowance and are given the right to say, if you shall so find, that there may be a greater or a less allowance, the act throws upon those contesting the minimum allowance the burden of proof. Instead of that burden having been assumed by the objectors, you have been advised by the representatives of the Government in the Waterways Commission and otherwise not only that the minimum allowance is safe, but that you may go much further.

You start, therefore, with a presumption arising out of what has been done by Congress, one which not only has not been in the slightest degree overcome by adverse proof, but has been more than corroborated.

Captain Kutz's idea, that for the present you should only allow the minimum of 160,000 horsepower, is not warranted by what appears in the act itself. Mr. Stetson said to you yesterday that as over 150,000 horsepower had been, for ever so long, taken from the American side with no perceptible ill effect, and as the water supply on the American side is only one-eighth that on the Canadian side, very much more than 160,000 horsepower has been demonstrated to be a safe taking on the Canadian side.

This is a common-sense view of the situation. There has been a demonstration that over 1,000,000 horsepower can be taken from the Canadian water without injury to the falls.

Secretary TART. I should think, Mr. Johnson, that the evidence of the engineers would indicate that that which was taken on the American side, in its diminution of water, was not confined to the water on the American side. I mean that the Niagara Falls company takes the water so high up that it affects not only the flow on the American side, but also the flow on the British side; and if that be true, then you could hardly say that that indicated what the effect on the American side was.

Mr. JOHNSON. If the facts are so, undoubtedly the inference is so. I did not gather, however, that they thought the taking by Mr. Stetson's company, which is altogether on the American side, drew from the water running down on the Canadian side.

Secretary TART. Yes; I think the geological professor who was here yesterday rather sustained that view.

Mr. JOHNSON. In a modified way. That is a fact with which you are more familiar than I am. Undoubtedly, however, this fact exists. There is an enormous preponderance of water on the other side, and if it is safe to take 150,000 horsepower on the American side, even if there is some draft upon Canadian water, it is not necessary that the taking upon the Canadian side should be kept as low as 160,000. The figures, as you will recall, which were expressed in cubic feet, which must be multiplied roughly by twelve, of the Waterways Commission are 216,000 on our side and 432,000 on the other.

It would seem to me, under all circumstances before you, under the discretion granted to me, there is no necessity at the present time that you shall subject the companies to that squeeze which has made this unamiable controversy between them necessary.

But I will argue this case upon the theory that you are going to follow the—

Secretary TAFT. I did not mean to foreclose the discussion of that point, Mr. Johnson.

Mr. JOHNSON. Upon that subject I have said all I want to say.

Secretary TAFT. I meant that it would be convenient to have some basis of discussion, and therefore I mentioned Captain Kutz's reports.

Mr. JOHNSON. I have said all I meant to say on that subject. You had the poetical and sentimental part of it yesterday. One day of that is enough for any ordinary digestion. I pass now to the question I am here to discuss.

Before passing to that question, however, I must express the difficulty I have in separating these Siamese twins. Here is the Ontario company [pointing to its representative, General Greene], with Canadian grants, and here [pointing to Mr. Cravath] is my distinguished friend who represents, so he tells you, an American company solely; but at times in the heat of argument the nice distinctions between these two companies are so fused that we could hardly tell which company he was really representing. Let us cut them apart, even though the separation must be with a ruthless knife, and, dis-severed, let each stand alone, the Canadian-Ontario company represented by the gallant general, and the American-Ontario company represented by one of the soldiers of our profession.

How, then, does Mr. Cravath's company stand in an appeal to you? Here are 160,000 horsepower to be apportioned by you, sitting as a chancellor—an unusual function for a Secretary of War—

Secretary TAFT. No; not under the present method of conducting the War Department. [Laughter.]

Mr. JOHNSON. To those who do not know, at least, an unusual function. You are to say to three companies, all of which have Canadian grants to take water in generating power in an aggregate greatly in excess of 160,000 horsepower, how that power shall be apportioned.

You must do that because the United States Government, in the exercise of the only function which enables it to prescribe any prohibition upon the Canadian water taking—in the exercise of its power to levy an import duty or to forbid importation—says: "We will not permit the importation into America of more than 160,000 horsepower." An American company which had prepared itself in America to transmit electric power which it expected to receive from Canada, because it will not be able to receive such power presents itself to you, demanding your consideration in the matter of this apportionment.

Pray tell me upon what foundation an American company can rest a right to say because three generators of power on the other side have been forbidden to export into the United States all the power they will generate that it is entitled to receive compensation because of the denial to the generating companies of the right to export what, at great expense, they had prepared themselves to manufacture?

As well might every other user in America of electrical power demand consideration because of its inability to get what it had hoped to receive if the American Government had not exercised its right, adversely to its subjects, to allow importation. The only persons who have any standing before you—I leave out the inter-

national—are the three companies which have been authorized by the Dominion of Canada to generate power by means of the use of the water of the Niagara River.

The grants in Canada, which are, and necessarily must be, the only grants of the use of Canadian water, are rendered comparatively valueless by reason of the forbidding of exportation. The question you must determine in this case, as Captain Kutz very intelligently puts it, although in an important respect I differ from him, is, what should be your point of view in determining the equitable rights of people, who, having made outlays of their money, are unable, by reason of the action of our Government, to derive more than a restricted advantage therefrom?

Those companies, outside of Canada, located in America, who expected to get something that will not reach them, because of the action of their own Government, are out of the range of consideration. We should deal with Canada in a spirit of reciprocity. We exclude her grantees, after an acquiescence on our part in the past, in a way that works an equitable injury and deprives her of benefit which would result from the exercise of her power, excepting to a limited extent. May she not expect, especially if we wish her to make a treaty in which our citizens are greatly interested, that you will not compensate Americans at the expense of those who have made outlays on the faith of her grants?

Now, how do these companies stand? All have Canadian grants. Two of them are companies composed of Americans, financed with American capital, and run solely by Americans. The other of them—they are all necessarily Canadian companies in the naturalization label put upon them—is a Canadian company through and through. It is Canadian in the personnel of its stockholders; in the capital put into it; in the financing of its bonds, issued in the course of its operations.

These three companies occupy positions which, thanks to the intelligent effort of Captain Kutz, you are able to understand without being compelled to sift that endless maze of contradictions with which you were met on that hot day of last July, when you were at Niagara Falls. All of them were authorized to generate a designated amount of power; but, at the time the cyclonic storm circled around and struck them, they were in a situation, because of the outlays they had made, and the manner in which the same had been made, which furnishes the proper basis for your consideration in equitably compensating them for the injury which has been done to them.

That extraordinarily inflated company—the Ontario—inflated in its pretensions and exaggerated in its statements, was authorized to generate 160,000 horsepower. It says that it went about the work of securing and disposing of power to that extent, through a contract I have never seen—possibly not to its disadvantage—because there are such things as contracts with strings. It entered into a contract it says, with an American company, entirely independent in its personnel, before it was able to deliver even a mule, or a pony power, much less a horsepower, that bound it—perhaps—in the future to deliver 160,000 horsepower. It seems to have been easier for it to make contracts with affiliated companies to deliver power

than to dig, excavate, and construct what would be necessary to generate such power.

To enable it to furnish 160,000 horsepower it would be necessary for it to construct three tubes, into which to put the requisite units. It had constructed no more than one of these tubes, and into one of these, crowd as it may, it can not put more than seven units. So far as regards the construction of the two other tubes, into which it would be necessary to put fourteen other units, making up the twenty-one necessary for the generation of 160,000 horsepower, it will be required to spend additionally \$6,500,000.

Although the citizens of America are now clamoring(?) for 90,000 horsepower, and can hardly wait until they get it, the Ontario company will not be in a position at the present time, when all the work which it has commenced is completed, to supply more than a limited part of the permitted horsepower. When it completes the tube it is now constructing and when all the units are crowded into it that it will hold, the company will be able to deliver not more than 66,000 horsepower. In order to do more than that it must go down into its pocket, or, in these modern days of promotion, what is better, down into the pockets of the public, and must try to realize out of the depths thereof \$6,500,000 more. The probabilities of it being able to raise the same, under the present circumstances, are hardly worth considering.

Three corporations come to you, who say: "We have been relying upon grants by the Canadian government, we have been making outlays upon their faith, and we want to receive out of that which you can allow—our only solatium for the injury done to us—what is our fair share."

The Ontario company has spent almost all of its money in putting itself into shape, utilizing nearly all its outlays to have one tube with the units therein which will enable it to generate 66,000 horsepower. That one tube will doubtless be completed.

Its outlay in and about such completion—I take the figures from Captain Kutz's report—will be \$5,877,000.

Mr. Stetson's company has qualified itself to produce 55,000 horsepower—five units of 11,000 horsepower each. Though not quite completed to that extent, it will undoubtedly so complete. The electric company I represent has qualified itself to produce 50,000 horsepower, and it will produce that power upon completion of the contracts made in the past.

Therefore, when all these outlays are completed, as they must be completed, there will have been spent by the Ontario company the amount I have stated, viz, \$5,877,000, and by our company \$6,250,000.

If, therefore, there was nothing more than this, after the three companies had finished the outlays and expenditures necessary to utilize the construction begun—because there can be nothing more apt than your own simile of the necessity of putting a roof upon a house partly constructed—if they would have, respectively, the ability to supply 66,000, 50,000, and 55,000 horsepower, a fair apportionment amongst them would be that which would take into consideration the horsepower each had qualified itself to deliver.

But, unfortunately for us and fortunately for the Ontario company, the situation is one which requires us to take into considera-

tion more than the horsepower capacity. The Ontario company, with the exception of some small outlay in the fore bays, has confined its expenditures—I do not mean absolutely, but practically, in view of what Captain Kutz reports—upon the tube which it will complete, leaving the second and third tubes practically to be commenced under future exigencies.

Both Mr. Stetson's company and my company made a very large amount of outlays with a view to a completion of their work as a whole to the full capacity permitted. To qualify each to produce but 50,000 and 55,000 horsepower would not have cost nearly the amount of money that has been expended. Each spent a very large sum in preparing the whole of the house it was authorized to construct for the roof. As I have said, it will require \$6,500,000 of expenditure on the part of the Ontario company to enable it to complete the second and third tubes, which it can hardly be expected to do under any limitation of power to be exported, to the extent of 160,000 horsepower all told.

Mr. Stetson's company in order to enable it to deliver 110,000 horsepower will have to spend but \$1,250,000. My company in order to qualify itself to deliver 125,000 horsepower is required to spend but \$1,576,000. If it fails to make the requisite expenditures and to complete, it will lose a very large amount of its past outlay. It can not be doubted that each will complete its work to its full capacity. With a comparatively trifling additional outlay, these companies will be in a position, respectively, to generate power up to 125,000 and 110,000 horsepower.

It was because of these facts, I do not doubt, that when Captain Kutz understood the situation he determined it would be inequitable to distribute the allotted power amongst the three companies in the proportion of the horsepower which each, in the immediate future, would be able to generate. He appreciated the equitable consideration to which Mr. Stetson's company and my company were entitled, because of the larger outlays made by each, in the light of a completion which must be made, because of the waste which will otherwise result.

I submit that he was entirely right in reaching the conclusion that each of the companies stood practically upon the same plane. Under these circumstances, what should be your point of view? You are dealing with the beneficiaries of Canadian grants. You will not desire, nor will our Government desire, to put upon Canada any unfair or unjust discrimination. Looking to the source of the grants, and to all the circumstances, you will doubtless allot the power in accordance with what is fair from the point of view of the grantor in such way as to work no discrimination against it.

Let us consider some of the things which have been said in opposition to what has been suggested by Captain Kutz before considering the point upon which I wish myself to oppose him.

Various considerations have been urged. One of these is that which grows out of the assertion concerning the contract for 90,000 horsepower. Upon this subject I have the benefit of Captain Kutz's report, which does not come down to us from the middle ages, but is dated September, 1906. Although we live in a rapidly moving world, we do not greatly change the status of our affairs in so short

a space of time. He reports no contract to deliver 90,000 horsepower, saving in connection with the American affiliated company. What he says affords a valuable side light as to the 90,000-horsepower contract. This is what really existed at the time of the report, in the matter of contract with the company which General Greene does not represent and which Mr. Cravath does:

The Niagara, Lockport and Ontario Power Company has actually executed contracts which call for the delivery within the near future of 6,000 horsepower.

There was a contract with the Niagara, Lockport and Ontario; but do you think, taking into consideration the fact that even in business matters there is a little milk of human kindness, that if by some misfortune the Canadian Ontario company can not deliver to the Lockport company the whole 90,000 horsepower Mr. Cravath will be hard on General Greene? Do you not think he would take an equitable view of the situation? The only pinch which can come will be that which can come from other sources, because of contracts which the Lockport company has entered into with third persons.

Again recurring to the report—

The Niagara, Lockport and Ontario Power Company has actually executed contracts which call for the delivery within the near future of 6,000 horsepower with provision for fixed increases at intervals, varying from three months to three years.

So that 90,000 horsepower is not so much of an exigency as Mr. Cravath, on his feet and feeling the fervor of advocacy within him, thought.

The delivery to third persons may rise to 14,000 horsepower, with the right to increase, though I do not know under what circumstances, to a possible 70,000. Is not the most favorable consideration we can give to these contracts that which will put them upon the plane of a 6,000 horsepower supply at the present, rising gradually in three years to 14,240?

Now, as to the date of even these contracts? "The first of these contracts is dated June, 1905, three others in the fall of 1905, one in March, two in April, and two in May, 1906."

What faith the Ontario company must have had, despite the hearings before the committee of Congress and the public sentiment which had been aroused, when it made these contracts in March, in April, and in May. It was only in May, 1906, that its work of running up contracts to the 14,000 and to the possible option of 70,000 was done.

And then, of course:

"In addition, the company claims to have contracts verbally closed for 13,000 additional firm horsepower, and negotiations pending for" some more. There is this trouble about that 90,000 horsepower contracted for. Either they will or will not get allowed by you the whole amount of that power. If they are allowed the whole 90,000, and if Mr. Stetson, as undoubtedly he is, is entitled to and receives an allowance of one-third, making 52,500, there will be for the poor Canadian company only what is left, 15,000 horsepower. If you do not allow the 90,000 horsepower inevitable ruin will fall on the Ontario, because, with moving eloquence, Mr. Cravath has told you that with less than that amount they can not profitably do business.

What, then, will be the use of working an unjust equality to accomplish no good? To allow 90,000 horsepower to the Ontario company

will be ruinous to my company, which, of course, can not profitably make the expenditures in America necessary to distribute 90,000 horsepower.

To allow the Ontario company 60,000 horsepower, as suggested by Captain Kutz, at the expense of the Canadian Company, which will only receive 37,500 horsepower, will do no good to the Ontario, because, as Mr. Cravath says, it can not profitably operate the 90,000 horsepower.

How the 90,000 horsepower is to be generated in a plant which at best will produce but 66,000 horsepower has not been explained. We are equally left uninformed as to the probability under any existing circumstances, of an additional construction, which will enable more than 66,000 horsepower to be generated by the Ontario company. If you give the Ontario 90,000 horsepower, you destroy us. If you do not give them that much an inequality will be worked without any beneficial result to the Ontario. Under these circumstances, where you must ruin us by following Captain Kutz's suggestion, without benefiting the Ontario, will it not be the exercise of a sound judgment to apportion amongst the three companies equally 160,000 horsepower, upon the assumption that with that amount each may conduct its operation with some profit?

Let us for a moment look at the matter from another point of view, i. e., from the transmission point. General Greene says: "We have spent \$1,000,000 in preparation for transmission in Canada, and have spent \$4,000,000 in preparing for transmission in America. You ought to take that into consideration in determining the apportionment." Does he not lose sight of the fact that in order to get any benefit out of his power he must provide for transmission? If he wishes to utilize even 66,000 horsepower he must provide means of transmission. He will derive no good from electric power generated on the Canada side of the placid waters of the Niagara River, after its tumble over the Falls, without transmission.

Allow his company one-third of the 157,500 horsepower and he still must transmit the power in Canada along the Niagara River, across the latter, and to the American takers. Even under the changed state of affairs transmission is necessary and the expenses thereof do not enter into the consideration of an equitable apportionment. Such apportionment must be determined by consideration of what each company has qualified itself to generate, and the extent to which it would be disappointed in the utilization of what can be generated.

One consideration has been suggested, which, superficially viewed, appears to have some merit. I refer to the claim that the Ontario company is entitled to one-third of the quantity, and, in addition thereto, to one-fourth of a third, because of its use of a smaller amount of water in generating the same amount of electric energy. That is, instead of being entitled to four-twelfths, it is entitled to five-twelfths, or to 65,000 horsepower instead of 52,500. I am assuming for the moment that the statement is correct with reference to the greater output of power from the use of a given amount of water. I recall nothing in the way of proof of the correctness of the statement.

If the Canadian government was to reduce the use of water so that only a certain amount of water was to be allotted to each of

the three companies, it will, of course, be necessary to pay each in the coin dealt with. We are not dealing, however, in the present case with a withdrawal of water.

We are dealing with three companies, each of which has a right to generate more power than it can now utilize, and, by virtue of the action, not of the Canadian government, but of this Government, these companies, presenting themselves at the American frontier with more than 160,000 horsepower, are allowed, in the aggregate, to deliver to America the restricted quantity of 160,000 horsepower. It is with the compensation for the horsepower which each could deliver, but which the American Government does not allow it to deliver, we are dealing. The American Government has nothing to do with the withdrawal of water. So far as it is concerned Canada may grant the right to withdraw all the water on its side. In no way has any company been restricted in its use of water. I submit that Captain Kutz is right in his suggestion that the only thing to consider is the apportionment of horsepower. Each company may have wasted any amount of water in generating power, inasmuch as the limitation imposed by Canada was not upon the use of the water, but upon the amount of the power to be generated. In the present case there was no waste. Whatever ability there is in the Ontario to generate a larger percentage of power results solely from its geographical situation.

Secretary TAFT. But I presume, Mr. Johnson, it is not unfair to infer from the language of the statute and the whole object of it, that what Congress had in mind in limiting the horsepower was really limiting the use of the water on the Canadian side?

Mr. JOHNSON. Oh, yes; beyond doubt; I will not deny that for a moment.

Secretary TAFT. It was the water they were directing their attention to.

Mr. JOHNSON. Beyond question. The horsepower did not do anything.

Secretary TAFT. But your claim is that there being this amount of horsepower produced, the question of the division among the three companies ought not to be affected?

Mr. JOHNSON. By the water taken, because all of them could take enough water to answer their purposes. They have two measures on the American side. You can have so many cubic feet of diversion ultimately measured in horsepower, and on this side it is horsepower you have to distribute. He says: "Why, I could manufacture my horsepower cheaper." I say I do not care for that. I do not care whether you take more water or not. If nature had stepped in and stopped the supply of water, and then there was a shortage, there would be a good bit more merit in the measurement of it in that way; but this is an artificial trouble, created by the action of a foreign government. The companies are hurt by that action, and they suffer in proportion to the capital invested. Another suggestion has been made by Mr. Stetson with regard to prior right; and in that, just as in this matter of the volume of water, there is something which appeals to the mind, although I think our point of view is the right one and do not accept their point of view.

Undoubtedly, if there was a shortage of water on the Canadian side, there would have to be a distribution of that water in accordance

with the priority of the grant. Priority of grant is not to be considered, in the adjustment of the equities of the parties, if the state of affairs be as follows: .

If A, B, and C, in the order of priority I have named, possess certain grants with abundant material out of which the grant may be supplied, so long as that abundant material continues, even though something occurs by which the product from that material can not be utilized, you have a case in which priority of the grant to take the material goes for nothing.

Of course, after the act of Congress had become practically probable, you would not permit a corporation to be considered in the adjustment of equities which, thereafter, acquired a grant. All these three companies, however, were in operation, each relying upon a grant, and each relying upon the continuance of past conditions. Although one had a grant which antedated the other, there was no shortage in the material with which to supply the grant. Because they can not utilize the product generated by their material, they gain or lose nothing by reason of their priority.

Secretary TART. Mr. Johnson, suppose there was a treaty—indeed, it does not make any difference whether there was a treaty—

Mr. JOHNSON. I hope there will be.

Secretary TART. Suppose the Canadian authorities themselves acted and said the Dominion government had the power?

Mr. JOHNSON. No; they did not. I will show you in a moment, because I see they did not.

Secretary TART. Suppose they said the government had the power to cut off, and said, "Here, you can take 16,000 cubic feet." I suppose, assuming that to be by a higher power which could affect a grant without being open to the charge of abrogation of its own grant, that that right of priority might have a very considerable effect.

Mr. JOHNSON. Oh, of course, it would.

Secretary TART. Because there it relates to the very subject-matter which was made the basis of the grant.

Mr. JOHNSON. Quite so; and I will show you in a moment that they did not have the power.

I grant you that if that priority carried with it the right to exercise the power to affect the grant the condition would be different. In the present case it was not exercised by the sovereignty which granted, but by another; but suppose it was exercised by the sovereignty which granted, there was nothing in the form of a grant which was prior, which carried with it any right as against the subsequent grant, on the part of the sovereign, to take away anything included in the later grant. Of course, each company would have the right to take water in case of a shortage thereof, in the order of their priority. In case of such shortage the exercise by the first company of its right might destroy all benefit of the later grant. Because of the fact that there was no reserve power to affect the grant, saving to the extent originally reserved, I was going to read you what is in the agreement conferring the right:

26. It is further agreed that if from any cause the supply of water at the point of intake, as by these presents defined, be diminished, the syndicate shall have no claim or right of action against the commissioners, but may deepen such point of intake to such extent as to restore the supply of water to the

volume or quantity necessary for the purpose of the syndicate, and that the granting or licensing of rights to the syndicate by these presents shall not give the syndicate any right of action against the commissioners nor give the syndicate any right of action against other licensees or grantees of the commissioners in respect of any diminution not substantially interfering with the supply necessary for the syndicate, nor so long as the necessary supply can be obtained by means of deepening at said point of intake.

That is a reservation of power in the grantor in case of a failure of the supply of water at the intake, making it the duty of the later grantee to deepen the water at that point, and if it can not do so, by reason of the diminution of the supply of water, it will have no right of action against the commissioners by reason of the later grant being made. There is no reservation, however, of power of the grantor to resume any portion of the grant for the benefit of the grantor.

The grant gives the right to each grantee, to the last as well as the first, absolutely, to take up to the extent permitted, so long as the supply of water holds out. If, therefore, the Canadian government, under the exercise of the right of eminent domain, which it may or may not possess—and I care naught about that—were to take any portion of the water, it would have to compensate, and it could take no more from the last than from the first, because it reserves no right excepting that of immunity in case of the deficiency of water.

Now, let us see where we stand upon the matter of discrimination suggested by Captain Kutz. In every one of these grants the Canadian government says: "It shall be your duty to deliver in Canada, if there is any demand for it, at a price not greater than the price in America, one-half of all your output."

Therefore all these companies came into existence with a knowledge that it was obligatory upon them if there should be a Canadian demand to supply it to the extent of one-half their output, with the liberty, as against such demand, to deliver one-half of such output in America. Of course, as long as no demand should exist in Canada for its one-half, all might go to America.

Captain Kutz suggests that inasmuch as my company has built a line of transmission to Toronto, and will probably supply 30,000 horsepower in Canada—his figures I think are a little high, but I am concerned more over the principle than the figures—while the Ontario will only supply about 10,000 horsepower, and Mr. Stetson's company about 5,000 horsepower, therefore, we having been constituted primarily for the supply of power in Canada and being likely to supply 30,000 horsepower there as against 15,000 by the two other companies, there ought to be a deduction of 22,500 horsepower from our allowance, to be distributed amongst the others.

It is difficult to gather from the terms of the grant any support for the suggestion that one company rather than another was constituted "primarily" for the supply of power in Canada. All were obliged equally to guarantee a Canadian supply, and all reserved equally the right as to one-half of its product to deal with America. Let us see whether the suggestion of Captain Kutz is just. In the first place it would have an unfortunate result. My company, as I have said, is Canadian through and through. It would sound oddly if it was forbidden to deliver its fair proportion as allowed by the grant in America, the duty toward Canada of all the companies being the same, because it had put itself in position by a large expenditure to

supply a Canadian demand, probably with a view to recoupment by the exercise of its privilege in America.

I do not believe any treaty will ever be made upon any basis which will work an inequality as against a purely Canadian company because of its having prepared itself better than the other companies to do its duty by its grantor. It is exceedingly improbable that the equal rights granted to each by Canada will be permitted to be made unequal because the naturalized Canadian companies have sought for the American market solely.

My company has qualified itself to the extent of 30,000 horsepower out of the one-half supply which it must reserve for Canadian use, and because of its being better able to do its duty toward the sovereign which has created it it is insisted upon by the other companies that because thereof it shall be practically cut off from the American market.

The American is undoubtedly the best market, because the greater demand in America for electric power enables a higher price to be realized. It may well be doubted if any company would have acted upon a Canadian grant if it had not had the opportunity of securing such market.

It is suggested that the purely Canadian company shall be unequally dealt with for no other reason than because it has been willing to do for Canada that which is there wanted, with the result, if the unequal distribution be allowed, of exonerating the other companies from supplying the cheap home market.

Secretary TAFT. What is the difference in the sale of horsepower?

Mr. JOHNSON. I would say \$10 or \$12; but I merely say that upon a statement made to me. Captain Kutz can perhaps tell you a great deal better than I can. I would say \$10 or \$12 at Niagara Falls.

Secretary TAFT. You think there is a difference of about \$10 a horsepower?

Mr. JOHNSON. I think \$10 or \$12; but you can find that out from a more reliable source of information than myself.

Secretary TAFT. But as a matter of fact there is a large difference?

Mr. JOHNSON. Oh, a very large difference. I guess Mr. Burton can tell what they are delivering horsepower at Niagara Falls for. Perhaps he does not want to.

Mr. BURTON. There is a difference. There is more demand on the American side, and the prices are somewhat higher.

Mr. JOHNSON. "Somewhat" is a euphonistic word, is it not?

Mr. BURTON. Yes.

Secretary TAFT. Do I understand there is a difference of \$10 or \$12?

General GREENE. We are selling on the Canada side at \$13 and on the American side at \$16.

Mr. JOHNSON. Well, that makes enough. I know it does not apply to Mr. Stetson's company, and I know the Ontario made a bad contract for themselves at Syracuse, which I have no doubt it will be very sorry after a while it made.

Then we are penalized for having done our duty; but suppose you have given us but 37,500 and have given them 60,000 horsepower. They step in, and, having gotten the rich market, can afterwards very well in competition undersell us.

They can beat us out of the Canadian market also, because if the product is sold on the Canadian side for \$13, and on the American

side for \$16, after the \$16 contracts have been filled the company which gets its power from Canada can undersell the corporation which has been deprived of the American market by underbidding in Canada. Where is the justice or equality in that? .

The result is they can cut us down to 37,500 horsepower. All the companies have made a large outlay on the American side. The syndicate which controls my company has spent, Captain Kutz says, \$1,000,000 on this side. It is building a railway for the purpose of obtaining a right of way which it can not otherwise acquire because, with the candor which usually distinguishes railroad corporations, a railroad franchise is used for acquiring what can not be acquired by the company which desires the same through an exercise of the right of eminent domain. All the companies have spent and are expecting to spend large amounts of money in America. Very large outlays made by my company in transmission will be lost if it is cut off from the American market.

It is impossible to deliver economically in America horsepower to the extent of but 37,500. Under my instructions it will not pay to provide the necessary transmission for less than 52,500 horsepower.

If, therefore, because we have done our duty by our grantor we are limited to an exportation into America of horsepower insufficient to justify the outlay, you will have given to the purely American companies the use of Canadian water to the exclusion of the Canadian company, which possesses a grant from the sovereign equal to the favored companies.

Mr. DUDLEY. Mr. Secretary, I desire to make a statement in behalf of the Niagara Falls Electric Transmission Company, which is the American distributing company.

Secretary TAFT. That is the distributing company for Mr. Johnson's company?

Mr. DUDLEY. Yes.

Secretary TAFT. You are the twin of Mr. Johnson?

Mr. DUDLEY. I have my statement here.

Secretary TAFT. You may present it.

STATEMENT OF FRANK A. DUDLEY, REPRESENTING THE NIAGARA FALLS ELECTRICAL TRANSMISSION COMPANY.

Captain Kutz has found no basis for discrimination against the Electrical Development Company and the Niagara Falls Electrical Transmission Company other than a belief that the Electrical Development Company will probably be able to sell in Canada 20,000 to 25,000 horsepower in excess of what either of the other two companies will sell in Canada, which conclusion we humbly submit is not justified by the facts, but if so, would not be a just basis for discrimination against us in the American market.

We agree with that part of the findings of Captain Kutz and the American members of the International Waterways Commission which says:

After a careful consideration of the amounts of capital invested in the power plants, the amounts required to complete the works as designed, their capacity as completed under expenditures now made or pledged, their capacity as de-

signed, the amounts of capital invested in transmission lines in the United States or on Canadian soil to connect with the United States, the contracts made for furnishing and receiving power, and other data, that there is no sufficient reason for discrimination between the companies.

But we do not agree to the exception which follows. We can not concede that the superior ability of one company or the other to sell power in the open market of Canada should have any relation to the right to sell power in the United States.

Each of the three great power-producing companies on the Canadian side has received equal rights and treatment from the Canadian government. No discrimination is made against two of them because they are controlled by American capital. In fact, the Canadian government has given to one of the companies controlled by American capital the right to take and use water of the Niagara River sufficient to develop 180,000 horsepower, while limiting the right of the company controlled by Canadian capital to the use of water sufficient only to develop 125,000 horsepower. No limitation or restriction is placed upon the American-controlled companies in marketing their power in Canada. Equal facilities, including the right of ex-appropriation, is given to each to extend its transmission lines anywhere within the Province of Ontario it may see fit, to reach or establish a market. An open market is freely afforded to all alike.

It should be borne in mind that the power which is to be transmitted into the American territory and there sold in the development of American industries is power generated from the waters of the Niagara River belonging to the Canadian government, and since the Canadian government imposes no restrictions on the American-controlled companies in using the water for power purposes, or in selling the power in Canada, it would seem only just and equitable that those companies should not have greater rights of power transmission in the American territory by reason of anything the Secretary of War should do or refrain from doing under the provisions of the Burton bill than are given us.

The facts are, however, that the Electrical Development Company is just beginning to sell power in Canada. It has no monopoly of the Canadian market. It has constructed a transmission line to Toronto and expects to transmit power to concerns in which the "Nicholls syndicate," so called in Captain Kutz's report, is interested. What the additional market will be is as unknown to the Electrical Development Company as to either of the other companies. Whatever market there is exists alike to all.

As was stated yesterday, the Province of Ontario has determined that power shall be supplied to the various municipalities within the radius of economical power distribution, and the demand from the various municipalities for power within the transmission area, so called, amounts to about 90,000 horsepower. This is a real demand, and public sentiment will eventually compel its fulfillment. Captain Kutz apparently entirely overlooked this principal opportunity to sell power on the Canadian side of the current. If I am correctly informed, each of our competitors is actively in the field for this market, and from such information as we now possess it is more than probable that one or the other, or possibly both, will sell some proportion of their output to the provincial government for

the use of the municipalities. A statute has been passed and the necessary legal steps taken to accomplish that result.

Respecting the ability of the Canadian power-producing companies to market some of their output in Canada and their preparations therefor, Captain Kutz says (p. 26) the Toronto and Niagara Power Company, the Canadian distributing company for the Electrical Development Company, are now constructing transmission lines to Toronto with a capacity of 20,000 horsepower.

The Ontario Transmission Company, the Canadian distributing company for the Ontario Power Company (p. 22), have installed, or there are being installed, lines to Welland, St. Catharines, and Thorold; that the capacity of their transmission lines for Canadian distribution is 6,000 horsepower.

The Canadian Niagara Power Company is building transmission lines in Canada from Niagara Falls to Fort Erie, a distance of 16 miles along the Niagara River, where naturally the greatest development will be likely to occur, with an ultimate capacity of 50,000 horsepower. While this power may be used largely in Buffalo, it is available to develop the Canadian frontier just as their American power was to develop the American frontier.

The Electrical Development Company has sought only the Toronto market in Canada. The whole province within economical distribution, with its numerous cities and villages, is open to all companies alike, and it is not within the province of any man to foretell which company will be selling the most power in Canada five years hence.

Therefore we maintain that the only reason which Captain Kutz and the American members of the International Waterways Commission give as a reason for discriminating is not, in fact, a valid reason, because it is not a fact that there is a probability that the Electrical Development Company will be able to sell in Canada from 20,000 to 25,000 horsepower more than either of the other two companies.

It is absurd to contend that the promoters of the Electrical Development Company, at the time of organization, did not have definitely in mind the American market. It was known to the organizers of that company as well as to the organizers of each of the other companies that an American market for power existed; that a Canadian market would, to a large extent, have to be developed; that it was more expensive to develop a market for power on the Canadian side than to supply power to an existing market on the American side.

We must assume that the power companies were organized and developed for the principal object of making money, and that the American market was an essential aim of each of the companies. It was known to the Electrical Development Company at the time of the inception of that enterprise that a market would not exist in Canada for the entire output of its plant, and it was undoubtedly the intention of that company, as evidenced by the statute under which it was organized, to sell 62,500 horsepower in the American market.

The Niagara Falls Electrical Transmission Company is a New York State corporation, having received its charter by the sovereign authority of the State. It stands on an equal footing with the Niagara Falls Power Company and the Niagara, Lockport and On-

tario Power Company, so far as relates to legal rights. All three companies acquired franchises and vested rights prior to the knowledge that any restrictive legislation would be introduced.

Captain Kutz reports that the Canadian Niagara Power Company and its allied transmission company have expended or are committed by contract to an expenditure for transmission lines in Canada for \$430,000. He reports the books of the Niagara, Lockport and Ontario Company show an expenditure of \$2,785,000, of which \$1,200,000 is represented by right of way and \$1,162,000 is represented by construction.

The Niagara, Lockport and Ontario Power Company in its brief (p. 12) makes the further claim, "That the expenditure to date for transmission lines and works exceeds \$3,500,000 and will reach \$4,000,000 by January 1, at which date the works will be nearly completed." The Niagara, Lockport and Ontario Power Company contend in their brief (p. 11) that "the Canadian Niagara Power Company has not expended all of the \$430,000, the amount to which it was obligated for its transmission lines."

Captain Kutz states (p. 9): "The value of the properties controlled by the Niagara Falls Electrical Transmission Company is approximately \$1,000,000," which is a correct statement. The \$246,000 represents, in part, the purchase price of property now belonging to the Niagara Falls Electrical Transmission Company; the difference in value, approximately \$754,000, is represented by property rights and maturing obligations of the subcompanies which the Niagara Falls Electrical Transmission Company is obligated to provide for. The Buffalo, Lockport and Rochester Railway is a subsidiary company, which is controlled by the "Nicholls syndicate." Its relations to the Niagara Falls Electrical Transmission Company are those of common ownership. Captain Kutz says the "Nicholls syndicate," a group of men who control the Electrical Development Company, gives control of these subsidiary companies to the power company. He further says (p. 9):

For carrying its transmission line to Rochester the Electrical Transmission Company proposes to use the right of way of the Buffalo, Lockport and Rochester Electric Railway. There is no contract to this effect, but as the Buffalo, Lockport and Rochester Electric Railway is controlled by the "Nicholls syndicate," above referred to, there is a community of interest. The Buffalo, Lockport and Rochester Electric Railway Company is now under construction, the contract for grading a double-track road and for the construction of a single-track road having been entered into with J. G. White & Co., contractors, on May 14, 1906, at a cost of \$2,250,000.

In addition to the expenditure mentioned in the contract, Captain Kutz omitted to state that \$800,000 had been expended in organization, rights of way, and construction prior to the signing of the contract May 14, and the purchase of the road had been concluded by the "Nicholls syndicate" in the fall of 1905. Thus the total sums represented by the value of the property of the Niagara Falls Electrical Transmission Company, \$1,000,000, and the sums expended and commitments made in connection with the Buffalo, Lockport and Rochester Electric Railway, \$3,050,000, is \$4,050,000 as against \$4,000,000, the amount required to nearly complete the transmission lines and works of the Niagara, Lockport and Ontario Power Company.

It is, of course, apparent that the right of way from Lockport to Rochester will be of no use to the Niagara Falls Electrical Transmission Company without it is able to obtain a right of way through the intervening territory from Niagara Falls to Lockport. The cost of this right of way, based upon the estimates of Mr. Walter Pearson, chief engineer, and the estimates of real-estate agents employed to secure the right of way in connection with the International Railway, will be the sum of \$750,000. This is a definite commitment, upon which the International Railway, in carrying out their part of the agreement, are now proceeding. This includes, from a common point, a right of way for a transmission line into the city of Buffalo. This is an investment which the Niagara Falls Electrical Transmission Company is, of necessity, obliged to make.

The cost of 100 miles of transmission lines to reach the city of Rochester and the city of Buffalo will require a further expenditure of \$1,500,000. The cost of distributing and transforming stations will require an expenditure of \$1,000,000, making a total of expenditures to which this company and the Buffalo, Lockport and Rochester Electric Railway Company are definitely committed, if its American investment is to succeed, of \$7,300,000, or 82½ per cent more than will be required by the Niagara, Lockport and Ontario Power Company for their American investment. As the Niagara, Lockport and Ontario Power Company have no allied railway company using the same right of way as their transmission company, we deduct on account of the value of the railway proper, \$2,300,000, allowing but \$750,000 for right of way from Lockport into the city of Rochester, leaving \$5,000,000, which will fairly represent the total of necessary expenditures made or to be made to complete our transmission and distributing system in accordance with plans adopted prior to the enactment of the present law.

Our contracts entered into and our acquisitions made have been entered into and made with the most serious intent to transmit into the United States territory and sell 62,500 horsepower. Our investments in distributing, transmission, and railroad systems never would have been made had we supposed we would have been limited in our rights to import power. Our engineers tell us it is impossible to make a financial success of our transmission enterprise if we are allowed to receive and transmit less than 50,000 horsepower, and that we would not be justified in constructing our transmission lines to Rochester and Buffalo to transmit but 37,500 horsepower.

We are obligated to furnish power to various of the municipalities between Niagara Falls and Rochester, and to furnish power to operate the Buffalo, Lockport and Rochester Railway, and to furnish power to the customers of the Albion Power Company, and the only practical way, having a regard for a fair return on the investment, is to carry out our plans for the sale and distribution of 62,500 horsepower by transmission lines extending to Buffalo and to Rochester.

With all justice to engineering skill and business management of the Niagara, Lockport and Ontario Power Company, we believe our plans for a transmission system are more elaborate than theirs, the distinguishing feature being that we contemplate the ownership or control of distributing systems in the territory of western New York which, of necessity, requires a larger expenditure. The success of our railroad enterprise depends largely on sharing the ex-

pense of right of way with our transmission company, the obtaining of power from our transmission company, and the development of industries along the right of way by the transmission company.

The financial success of our transmission company depends on the amount of power we are permitted to transmit. No transmission company would prove a financial success in western New York, with an investment of \$4,000,000 or more in transmission and distributing systems under known conditions, if it were permitted to receive at Niagara Falls and transmit only 37,500 horsepower. Hence the giving to any other transmission company greater rights, so far as relates to the amount of power to be received and transmitted, must inevitably be a discrimination against us, giving to the other companies the advantage of a larger return on their investment, placing us where we are unable to compete with the other companies, and, in fact, limiting our sales of power to those companies which we control. In our minds, no good reason can be found for such a discrimination. Our plans for the sale of Canadian power in the United States were made before the introduction of the Burton bill, and our vested rights equal in importance those of any other company.

In section 4 of the Niagara, Lockport, and Ontario Power Company's brief, page 5, it says the present investment on the Canadian side of the three applicants was found by Captain Kutz to be as follows:

Ontario Power Company	\$5, 142, 000
Electrical Development Company	4, 500, 000
Canadian Niagara Company	4, 672, 000

It has, however, entirely ignored the additional statement from Captain Kutz's report, that the amount required to complete the existing contracts of the three companies is as follows:

Ontario Power Company	\$715, 000
Electrical Development Company	1, 760, 000
Canadian Niagara Company	678, 000

which amounts, it would seem, should be added to that already spent and which would then complete the plants to a point as noted in Captain Kutz's report, paragraph 24, page 12, where the Ontario Power Company would have developed 66,000 horsepower, the Electrical Development Company 50,000 horsepower, and the Canadian Niagara Power Company 55,000 horsepower, thus at that point making the total investment of the three companies as follows:

Ontario Power Company	\$5, 857, 000
Electrical Development Company	6, 260, 000
Canadian Niagara Power Company	5, 350, 000

of which sum the Ontario Power Company will have spent $33\frac{6}{10}$ per cent, the Electrical Development Company $35\frac{8}{10}$ per cent, and the Canadian Niagara Power Company $30\frac{6}{10}$ per cent.

If this percentage is used for a basis of computing the division of the 160,000 horsepower among the three power companies, the allotment would be as follows:

	Horsepower.
Ontario Power Company	53, 500
Electrical Development Company	57, 500
Canadian Niagara Power Company	49, 000

which we submit is as equitable as the division proposed by any of the other companies.

The other companies contend that by reason of their starting their enterprises at an earlier date they are entitled to prior rights in the American territory; but it should be borne in mind that since the beginning of its construction the Electrical Development Company has made the greatest progress toward the total completion of its plant, and according to Captain Kutz's report, page 12, the amount required in addition to that already spent and contracted for to complete the plants of the three companies is as follows:

Ontario Power Company-----	\$6, 500, 000
Electrical Development Company-----	1, 576, 000
Canadian Niagara Power Company-----	1, 250, 000

making the total cost of each plant, when completed, as follows:

Ontario Power Company-----	\$12, 357, 000
Electrical Development Company-----	7, 836, 000
Canadian Niagara Power Company-----	6, 550, 000

Of these amounts the Ontario Power Company has spent only 45 per cent needed to complete its plant, the Electrical Development Company about 80, and the Canadian Niagara Power Company about 80 per cent.

Therefore, if diligence is to be rewarded, or is a matter to be considered in the computation as to distribution of power on the American side, the Electrical Development Company and the Canadian Niagara Power Company would stand on equal footings, while the Ontario Power Company would be entitled to but little more than one-half the power which should be allotted to the other two companies, and on this point Captain Kutz says, "While the projected development of the Ontario Power Company is considerably greater than that of the other two companies, this apparent advantage is balanced by the fact that the other two companies are more fully committed by the expenditures already made to the complete development."

I assume it is among the possibilities that the Ontario Power Company may never proceed with its development beyond the completion of the development to produce 66,000 horsepower. The fact must be borne in mind that one of the great integral parts of its work is the building of the conduits through the Queen's Park; that but one conduit is now in place, and, so far as we can ascertain, no efforts are being made to install the others.

Captain Kutz finds that the Ontario Power Company has no contracts calling for the delivery of the second block of 60,000 horsepower earlier than January 1, 1911, and that means the construction by the Ontario Power Company of a second conduit and a consequent expenditure of \$3,250,000. Therefore, within a reasonable future the Electrical Development Company will actually be developing 125,000 horsepower as against 66,000 horsepower produced by the Ontario Power Company.

The Ontario Power Company claims that because it makes greater use of a given amount of water—that is, develops power under a greater head—it should be entitled to greater consideration in the allotment of power in the American territory. Captain Kutz duly considered that claim and dismissed it, stating that each of the com-

panies fully utilizes the head incident to its geographical location, and any distinction in the matter of permits based on relative natural advantages would appear to be unjust.

In conclusion, there seems to be no good or sufficient reason why any discrimination should be made by the Secretary of War against the Electrical Development Company and the Niagara Falls Electrical Transmission Company in the allowing of permits for power to be transmitted into the American territory.

The real object sought to be attained by the United States authorities was the limitation and regulation of the use of the waters of the Niagara River in the development of power by treaty between the Government of the United States and the Government of Great Britain. We believe it was recognized both by the President and Congress that the Burton statute was not intended to be a final solution of the questions relating to the regulation and control of the waters of the Niagara River for power purposes, but that the final solution could come only with a treaty which would have the approval of the great business and commercial interests of both countries, having a due regard to the preservation of the falls for their scenic value and their use in the development of power for their economical value.

Without desire to unnecessarily emphasize the statement of Captain Kutz, viz. "On the other hand, any greater discrimination against the Electrical Development Company, which is owned almost wholly by Canadian capitalists—the other two companies being owned almost wholly by Americans—may give rise to a feeling of resentment on the part of the people of Canada and tend to retard the negotiation of a treaty between the two countries concerning the preservation of Niagara Falls," I am certain that in Captain Kutz's most thorough investigations he found a unanimous sentiment existed in Canada in favor of permitting the applicant and its associate power-producing company to share equally with either of the other companies so far as relates to sharing the American market. The people of Canada who represent much of its industrial and transportation development can not but feel, if their government makes no discrimination against American-controlled companies in Canada seeking a Canadian market, it would hardly be just for the United States to make a discrimination against Canadian-controlled companies in the United States seeking a United States market, and the injustice of such a discrimination seems to be more apparent when it is considered that the waters from which the power is made, to be transmitted into and sold in the American territory, are waters belonging to the Canadian Government.

Therefore it seems that if the object of the statute is to be attained viz, a treaty negotiated, the first essential is that the great business interests of the two countries should be reasonably satisfied with the division of power-transmission rights under the Burton bill.

Whatever the necessities of the other two companies may be respecting the American market, they are not greater than the necessities of our company respecting the American market, and our Canadian friends rest in confidence in their belief that the Secretary of War will recognize the full justice of their claims.

Secretary TART. If there is any desire on the part of anybody to file an answer or additional suggestion to what Captain Kutz says

in his construction of the briefs of counsel, I will be very glad to see it.

Mr. GREENE. Within what time?

Secretary TAFT. Within a week. Mr. Root is anxious to take up this matter.

Mr. GREENE. Is there not going to be a distribution of this pretty soon?

Secretary TAFT. As soon as I get through with my annual report. I will have to get that in during the first week in December.

Mr. GREENE. There has been a perpetual extending of the permission to file briefs. They were to have been filed the 3d of November, and to-day there were a lot of briefs coming in.

Secretary TAFT. But you were in the Engineer Corps, and these other gentlemen and I have been in the profession of the law. The time for filing briefs goes on indefinitely.

Mr. GREENE. I think perhaps we should like to reply to Captain Kutz, in all friendliness, but we expect some time to be fixed when the filing of briefs shall cease.

Secretary TAFT. It is not necessary to let you have his statement at all. I am not sure, but I think he questions one of your statements.

Mr. GREENE. I would like to answer, but I desire to have a time fixed when the answer is to be back.

Secretary TAFT. You had better get it in in the course of a week. Mr. Root spoke to me to-day and said he was anxious to confer with me on this subject before I make a decision, because, as we have heard, the question of a treaty with Canada may be more or less affected by what we do. Of course I should not like to take any step that would interfere with his action in the matter. What I do, therefore, will be after conference with him; but I am very doubtful whether I shall be able to dispose of it before New Year's.

Mr. LOVELACE. I do not like to say much in Mr. Stetson's absence, but we are right up against the point where we want to have this matter decided. We want it very soon.

Secretary TAFT. Gentlemen, they put this matter on the Secretary of War, and it will have to be taken into consideration that he has to attend to other duties besides this Niagara Falls matter. I will take it up and dispose of it as soon as I can.

(The hearing was thereupon adjourned.)

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